DOCUMENT RESUME

ED 281 925 UD 025 474

TITLE Civil Rights Division: Enforcing the Law, January 20, 1981--January 31, 1987.
INSTITUTION Department of Justice, Washington, D.C. Civil Rights Div.
PUB DATE 31 Jan 87
NOTE 80p.
PUB TYPE Legal/Legislative/Regulatory Materials (090) -- Reports - Descriptive (141)

EDRS PRICE MF01/PC04 Plus Postage.
DESCRIPTORS *Civil Rights; Civil Rights Legislation; Equal Education; *Equal Opportunities (Jobs); Equal Protection; *Federal Government; *Housing Discrimination; *Law Enforcement; *Voting Rights
IDENTIFIERS Department of Justice; Reagan Administration

ABSTRACT

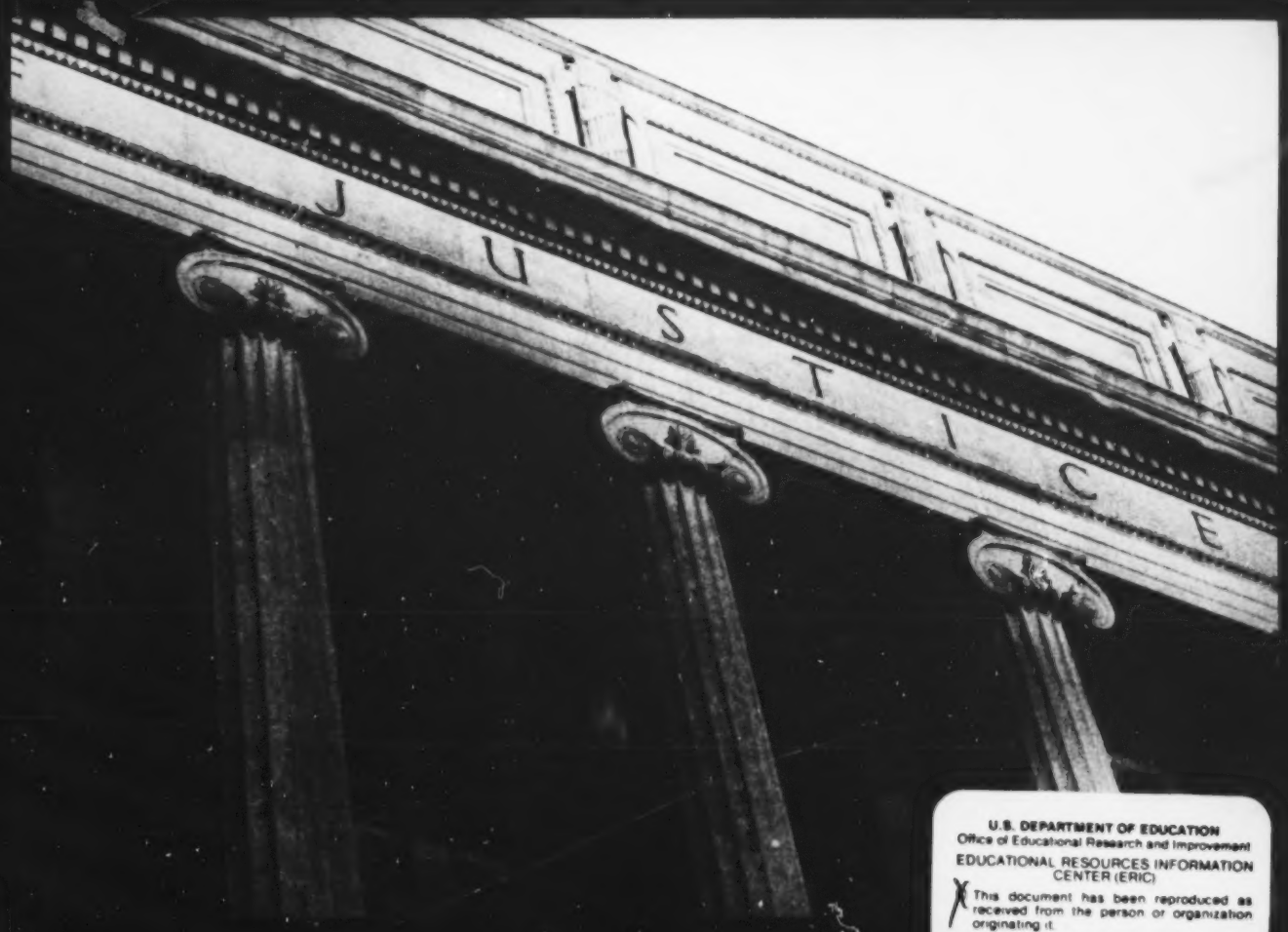
This document describes the enforcement activities and accomplishments of the Civil Rights Division of the United States Department of Justice between January 20, 1981 and January 31, 1987. Emphasis is placed on describing the enforcement responsibilities and programs, not on listing comprehensively cases and activities. The report is divided into the following nine sections: (1) a general introduction; (2) Criminal Civil Rights Violations, especially those involving racial violence; (3) Educational Opportunities, with emphasis on desegregation enforcement; (4) Equal Employment Opportunities, covering discrimination cases and back pay awards; (5) Fair Housing/Consumer Credit/Public Accommodations; (6) Rights of Institutionalized Persons; (7) Voting Rights, including proposed changes in law; (8) Civil Rights Appeals; and (9) Coordination of Civil Rights Enforcement Activity. The report is illustrated with maps and charts. (KH)

****
* Reproductions supplied by EDRS are the best that can be made *
* from the original document. *
****

U.S. Department of Justice

ED281925

Civil Rights Division



January 20, 1981 – January 31, 1987

U.S. DEPARTMENT OF EDUCATION
Office of Educational Research and Improvement
EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)

X This document has been reproduced as received from the person or organization originating it.

☐ Minor changes have been made to improve reproduction quality.

• Points of view or opinions stated in this document do not necessarily represent official OERI position or policy.

"PERMISSION TO REPRODUCE THIS MATERIAL HAS BEEN GRANTED BY
Wm. Bradford Reynolds
U.S. Dept. of Justice
TO THE EDUCATIONAL RESOURCES INFORMATION CENTER (ERIC)."

UD 025 474

2

U.S. Department of Justice
Civil Rights Division

Wm. Bradford Reynolds
Assistant Attorney General

James P. Turner
Deputy Assistant Attorney General

Mark R. Disler
Deputy Assistant Attorney General

Michael Carvin
Deputy Assistant Attorney General

Linda K. Davis
Chief,
Criminal Section

David L. Rose
Chief,
Employment Litigation Section

Arthur E. Peabody, Jr.
Chief,
Special Litigation Section

David K. Flynn
Chief,
Appellate Section

James M. Schermerhorn
Special Litigation Counsel

Nathaniel Douglas
Chief
Educational Opportunities Section

James S. Angus
Chief,
Housing and Civil Enforcement Section

Gerald W. Jones
Chief,
Voting Section

Stewart B. Oneglia
Chief,
Coordination and Review Section

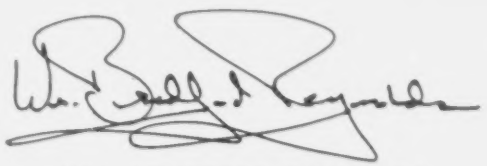
Alexander C. Ross
Special Litigation Counsel

Robert K. Bratt
Executive Officer,
Administrative Management Section

Foreword

This document describes the enforcement activities and accomplishments of the Civil Rights Division of the U.S. Department of Justice over the past six years. It is not intended to serve as a comprehensive listing of cases and activities, but rather as a general resource document describing the enforcement responsibilities and programs of the Division, with particular emphasis on the roles our enforcement sections have played and the impact they have had in protecting the civil rights and liberties of each and every American citizen. Their impact has been substantial in every area of civil rights enforcement -- education, employment, housing, consumer credit, public accommodations, public institutions, voting, and criminal civil rights enforcement.

It is with great pride that I have served as Assistant Attorney General of the Civil Rights Division during this period, and it is with an equal measure of pride that I present the accomplishments of the 400 dedicated men and women of this Division.



WM. BRADFORD REYNOLDS
Assistant Attorney General
Civil Rights Division
January 31, 1987

Civil Rights Division - Enforcing the Law

January 31, 1987

Contents

I. Introduction

Civil Rights Division, District Court Cases Filed by State, January 20, 1981 through January 31, 1987 ..... I-A

Civil Rights Division, District Court Cases Filed by Subject, January 20, 1981 through January 31, 1987 ..... I-B

II. Criminal Civil Rights Violations

Criminal Civil Rights Prosecutions by State and Territory, January 20, 1981 through January 31, 1987 ..... II-A

Criminal Civil Rights Investigations and Prosecutions by Fiscal Year, October 1, 1977 through January 31, 1987 ..... II-B

Criminal Civil Rights Prosecutions Involving Racial Violence, October 1, 1977 through January 31, 1987 ..... II-B

III. Educational Opportunities

Educational Opportunities Enforcement by State, January 20, 1981 through January 31, 1987 ..... III-A

School Desegregation Cases with Magnet Schools/Programs as Remedial Components Since 1981 ..... III-B

IV. Equal Employment Opportunities

Employment Discrimination Cases Filed by State, January 20, 1981 through January 31, 1987 ..... IV-A

Employment Discrimination Cases Filed by Year, January 20, 1977 through January 31, 1987 ..... IV-B

Employment Back Pay Awards by Year, January 20, 1977 through January 31, 1987 ..... IV-C

V. Fair Housing/Consumer Credit/Public Accommodations

Housing, Equal Credit, Public Accommodations Investigations by State, November 1, 1983 through January 31, 1987 ..... V-A

Housing, Equal Credit, Public Accommodations Lawsuits by State, November 1, 1983 through January 31, 1987 ..... V-B

Fair Housing Suits by Type of Defendant, November 1, 1983 through January 31, 1987 ..... V-C

VI. Rights of Institutionalized Persons

Facilities Investigated Subject to CRIPA by State and Territory, May 1980 through January 31, 1987 ..... VI-A

Status of Investigations Conducted Under CRIPA, May 1980 through January 31, 1987 ..... VI-B

VII. Voting Rights

Voting Rights Litigation in which the Department of Justice Has Been Involved by Period and by State ..... VII-A

Section 5 Voting Changes Submitted through September 30, 1986 ..... VII-B

Section 5 Voting Changes Submitted by State, January 1, 1981 through September 30, 1986 ..... VII-C

Section 5 Voting Changes to Which Objections Have Been Interposed by Type, January 1, 1981 through September 30, 1986 ..... VII-D

Section 5 Voting Changes to Which Objections Have Been Interposed by State, January 1, 1981 through September 30, 1986 ..... VII-E

VIII. Civil Rights Appeals

Supreme Court Merits Decisions by Fiscal Year, January 20, 1981 through September 30, 1986 ..... VIII-A

Courts of Appeals Merits Decisions by Fiscal Year, January 20, 1981 through September 30, 1986 ..... VIII-B

IX. Coordination of Civil Rights Enforcement Activity

Statutes Prohibiting Discrimination by Type of Coverage ..... IX-A

Types of Recipients of Federal Financial Assistance by Agency ..... IX-B

Status of Section 504 Regulations Governing Federally Conducted Programs as of January 31, 1987 ..... IX-C

Introduction

The Civil Rights Division of the Department of Justice was established in 1957, following enactment of the first civil rights statute since Reconstruction, as the primary institution within the federal government responsible for enforcing federal statutes prohibiting discrimination on the basis of race, sex, handicap, religion, and national origin. Over the past 30 years, the Division has grown dramatically both in size and responsibility.

With the enactment of the 1957, 1960 and 1964 Civil Rights Acts, the Voting Rights Act of 1965, the Fair Housing Act of 1968, the Equal Credit Opportunity Act of 1974, the Equal Educational Opportunities Act of 1974, the Civil Rights of Institutionalized Persons Act of 1980, and various other civil rights statutes, the scope of the Division's enforcement activities has significantly expanded. Today the Division safeguards the constitutional and federal statutory rights of all Americans to be free from discrimination in education, employment, credit, housing, public accommodations and facilities, voting, and certain federally funded and conducted programs. Additionally, the Division is charged with prosecuting criminal civil rights violations.

Under the Administration of President Reagan, the single and resounding theme that has characterized the law enforcement activities of the Civil Rights Division has been the legal, constitutional and moral imperative of equal treatment for all individuals without regard to skin color, gender, ethnicity or religious beliefs. Guided by this principle, the Division has aggressively enforced civil rights laws throughout the United States (see Appendix I-A, Civil Rights Division — District Court Cases Filed by State, January 20, 1981 through January 31, 1987).

A significant portion of the Division's resources is devoted to investigating civil rights violations. These investigations have touched every state in our Nation, have involved the rights of virtually every racial, ethnic, gender, and religious group, and have encompassed all substantive areas of our enforcement authority (see Appendix I-B, Civil Rights Division — District Court Cases Filed by Subject, January 20, 1981 through January 31, 1987). Many of these investigations result in voluntary compliance by the offending parties. In other instances, however, it is necessary for us to file suit, not only to end all discriminatory practices by the defendants and to obtain full redress for the victims of discrimination, but also to send a strong and unambiguous message to other offenders or would-be offenders that discrimination against any individual will not be tolerated by this Civil Rights Division.

Our lawsuits have involved a broad range of civil rights violations, defendants, and victims. For example, over the past six years, we have brought suit

- against numerous substantially all-white suburbs of two major northern cities that maintained durational residency requirements for municipal employment that operated to exclude virtually every black applicant;
- against a state employer that discriminated against pregnant female employees in its temporary disability program;
- against developers and marketers of time-share resort properties from Florida to California that discriminated against minorities;
- against lenders that refused to grant credit to American Indians where the collateral for the loan would be located on an Indian reservation;
- against mental retardation facilities that overused physical restraints and misused powerful tranquilizing drugs;
- against a state maritime academy that had intentionally discriminated against women in recruitment and admissions;
- against a city that denied blacks an equal opportunity to participate in municipal elections through an at-large election system rather than elections by district.

These are but a few examples of litigation pursued by the Division since 1981. In the area of criminal prosecutions of civil rights violations, the Division has established an unprecedented success record and has played a major role in the elimination or significant reduction of many racial hate groups throughout the country.

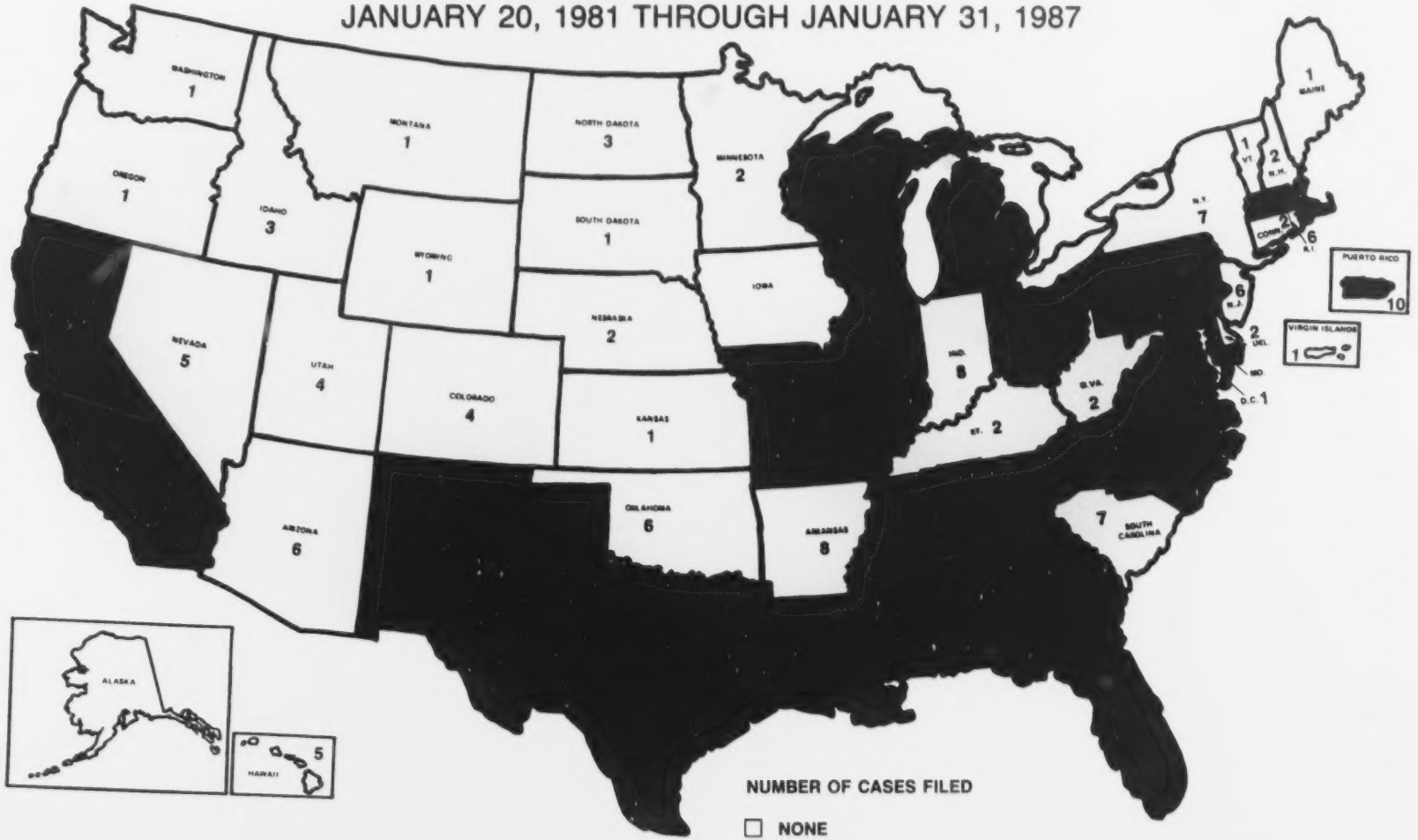
Significantly, we have closely scrutinized remedies imposed over the last two-and-a-half decades of civil rights enforcement to measure their effectiveness. In every case, we have sought as a remedy measures that will end all discrimination and that will provide full and lasting relief to those who have suffered injury at the hands of the wrongdoer. And, where we have been able to develop

more effective and lasting remedial alternatives, we have vigorously urged these upon the courts and parties. Thus, for example, this Division has been instrumental in the development of magnet schools and programs throughout the country as an effective desegregation alternative to forced busing, and one that has as an essential focus providing quality education for all public school children. We have also experienced surprising success with affirmative action remedies in the employment area by emphasizing outreach, training and active recruitment as the best means to achieve equal employment opportunities.

While substantial progress has been made over the past 30 years in the civil rights arena, discrimination still exists. In many instances, it is far more subtle than the blatant discrimination of the 1950s and 1960s; nevertheless, prejudice and bias, wherever it exists and to whatever degree, are a cancer within our society that must be eliminated. The Civil Rights Division's dedication to that end is well documented. Its commitment today remains no less than 30 years ago to protect the rights of all citizens through the aggressive enforcement of the laws passed by Congress for that purpose.

CIVIL RIGHTS DIVISION

DISTRICT COURT CASES FILED
BY STATE AND TERRITORY
JANUARY 20, 1981 THROUGH JANUARY 31, 1987



NUMBER OF CASES FILED

- NONE
- LESS THAN 10
- 10 – 25
- 26 – 40
- GREATER THAN 40

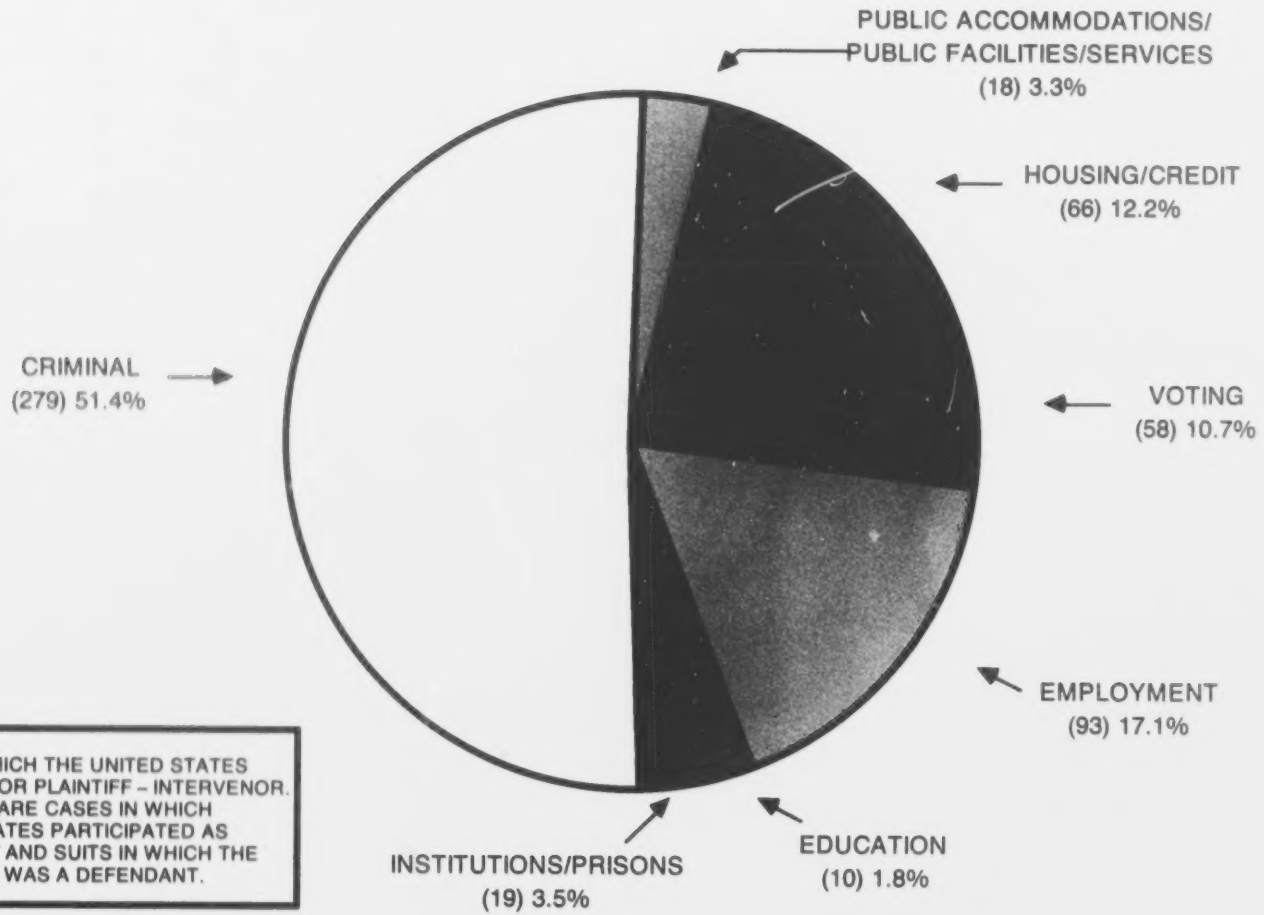
543 SUITS IN WHICH THE UNITED STATES WAS PLAINTIFF OR PLAINTIFF-INTERVENOR. NOT INCLUDED ARE CASES IN WHICH THE UNITED STATES PARTICIPATED AS *AMICUS CURIAE* AND SUITS IN WHICH THE UNITED STATES WAS A DEFENDANT.

(I–A)

CIVIL RIGHTS DIVISION

DISTRICT COURT CASES FILED
BY SUBJECT
JANUARY 20, 1981 THROUGH JANUARY 31, 1987

(I–B)



543 SUITS IN WHICH THE UNITED STATES WAS PLAINTIFF OR PLAINTIFF – INTERVENOR. NOT INCLUDED ARE CASES IN WHICH THE UNITED STATES PARTICIPATED AS *AMICUS CURIAE* AND SUITS IN WHICH THE UNITED STATES WAS A DEFENDANT.

Criminal Civil Rights Violations

The Division is charged with enforcing federal criminal statutes designed to preserve personal liberties. This prosecution effort focuses on three primary areas: (1) two laws passed during Reconstruction prohibit persons from acting under color of law, or in conspiracy with others, to interfere with an individual's federally protected rights; (2) other statutes prohibit the holding of individuals in peonage or involuntary servitude; and (3) provisions of the 1968 Civil Rights Act prohibit the racially motivated use of force or threats of force to injure or intimidate persons involved in the exercise of certain rights and activities.

In a society as large, diverse, and complex as ours, it comes as no surprise to hear of abuses of individual rights. What makes this country unique is the existence of a national policy to combat such abuses through active enforcement of federal criminal sanctions. The cases investigated and prosecuted throughout the United States by Civil Rights Division attorneys and Assistant United States Attorneys are a reflection of that federal policy.

Violations of Individual Liberty

Since 1981, one or more criminal civil rights cases have been filed in 37 of the 50 states, and in Puerto Rico (see Appendix II-A, Criminal Civil Rights Prosecutions by State and Territory, January 20, 1981 through January 31, 1987). These prosecutions have addressed an extraordinary array of criminal conduct. The following incidents are but a few examples.

On a hot summer night, the driver of a vehicle involved in a minor traffic accident was arrested by a New Jersey state police trooper. The driver was handcuffed and placed in the back of a police car. When the arrested man kicked out one of the car windows, the trooper entered the car and repeatedly struck the shackled man in the head and neck with a heavy metal flashlight, fracturing his skull and causing brain injuries that resulted in his death.

Officials and officers of the Piedmont Correctional Center in Salisbury, North Carolina, planned to "teach a lesson" to two prisoners who had angered prison officials. The two inmates were removed from their cells separately, and each was severely beaten while in full restraints — handcuffs, that were attached to a waist chain, and leg irons. The officers used their fists, a leather slapjack, and a thirty-six inch riot baton. Both inmates suffered grave injuries, including a fractured skull and a concussion.

Crosses were burned in front of, and shots fired into, numerous residences in Alexander and Iredell Counties, North Carolina, when persons who lived in the homes "dared" to associate with individuals of another race. Many of the shootings were aimed at occupied dwellings and, in one, a five-year-old boy narrowly escaped injury. Following the incidents, many people moved from their homes, while others were driven to extraordinary measures — including sitting up at night armed with shotguns — to safeguard their homes and families.

A small religious cult calling itself the "House of Judah" established a primitive residential camp in rural Michigan. Cult leaders instituted a reign of terror at the camp, relying on brutal beatings and torture to control cult followers. After a twelve-year-old boy ran away from a camp work detail, cult leaders whipped him so severely that he died of his injuries, without ever receiving medical treatment.

Each of the events described is an example of conduct punishable under the federal criminal civil rights statutes. The Division is responsible for the enforcement of these federal laws and for the recent, successful prosecutions of those involved in the above-cited conduct.

The Federal Response

Thousands of criminal civil rights complaints are received by the Department of Justice annually. Initially, they may be in the form of telephone calls, letters, or in-person statements to the FBI. Each complaint that appears to have any substance whatsoever is investigated by the FBI, and a report of the incident is made. These reports are reviewed carefully by both Civil Rights Division prosecutors and Assistant United States Attorneys throughout the country. Matters which are determined to be undeserving of further prosecutorial attention are closed and the Civil Rights Division attorney to whom the matter has been assigned prepares a statement of reasons for closing.

If a closed investigative report involves claims of official misconduct, the Civil Rights Division sends letters to the interested parties (including the complainant and/or alleged victims and subjects of the complaint) notifying them of the Department's closing action. This notification system is, to our knowledge, unique in law enforcement and, while it is no small task (since 1984 some 20,000 notification letters have been sent), we believe these letters

provide assurance to both the victims and subjects of the investigation that the allegations are carefully considered and not lost in some great bureaucratic quagmire in Washington. All other incidents reported by the FBI are pursued to grand jury investigation and, where the evidence developed is sufficient, to trial, unless a plea is entered.

The civil rights prosecution effort has been most impressive. At one level, it can be measured by the Division's success rate, which in FY 1986 reached an all-time high of eighty-two percent (82%) (see Appendix II-B, Criminal Section Investigations and Prosecutions, October 1, 1977 through January 31, 1987). At another and more important level, it can be measured by the messages conveyed by a vigorous, thorough and unrelenting criminal civil rights enforcement commitment by the federal government, *i.e.*, the message to violators and potential violators of our abiding intolerance of such behavior and, conversely, the message to every other citizen that their individual rights are being safeguarded in the most vigilant and uncompromising manner.

Our prosecutors frequently handle cases of national significance which either cannot be, or are not, sufficiently addressed by state or local authorities. These are invariably matters of intense public interest. Thus, we have prosecuted outlandish conduct ranging from the brutal killing of a black musician in Kansas City, Missouri, and a young man of Chinese ancestry in Detroit, to the holding of young girls against their will in California and Nevada, the cover-up by police officers in Puerto Rico of the murder of two pro-independence youths in police custody, and the killing of a Jewish radio personality by white supremacists in Denver. These and hundreds of other crimes involving police or official misconduct, racial and religious violence, or the abuse of alien or migrant workers have been vigorously pursued.

Racial Violence

In 1986 the Division continued its priority emphasis on the prosecution of incidents of racial violence (see Appendix II-B, Prosecutions Involving Racial Violence, October 1, 1977 through January 31, 1987). There have been some notable successes on this front in the past several years. This past year, a three-year grand jury investigation of crossburnings and shootings in North Carolina, previously mentioned, ultimately resulted in nineteen convictions, including those of three statewide leaders of the White Knights of the Ku Klux Klan. Sentences obtained included prison terms of up to seven years and a total of $17,000 in fines.

In Philadelphia, four defendants, including a juvenile, were convicted of destroying by fire the home of a black couple who had moved into a white neighborhood. The fire was set to prevent the black couple from returning to their home and to intimidate other black families from moving into the neighborhood. The defendants received prison terms and were ordered to pay restitution to the family.

In another case in North Carolina, a white state prison guard, a member of the Carolina Knights of the Ku Klux Klan, pled guilty to interfering with the employment rights of a black correctional officer who had filed a grievance for his unsuccessful attempt to obtain a promotion at the correctional facility. The defendant had sought to intimidate the victim by burning a cross near his home.

In Seattle, Washington, in December of 1985, the Department of Justice successfully prosecuted 23 current and former members of the Aryan Nation hate group for violations of the RICO statute. The Civil Rights Division is actively investigating allegations that members of the same and other related organizations have violated federal criminal civil rights statutes in connection with the killing of Denver talk show host, Alan Berg, and other incidents.

In addition, throughout the past year and into the present we are continuing our substantial efforts to investigate and prosecute acts of racial violence committed by organized hate groups such as the White Patriot Party and an Aryan Nation splinter group known as The Order. Indeed, the Division has just concluded a grand jury investigation where five members of the former White Patriot Party in North Carolina were indicted for federal firearms violations.

Law Enforcement Misconduct

Investigations into complaints alleging misconduct by law enforcement officials are also a major part of the Division's criminal law enforcement activity. After a four-month trial, a New Jersey state police trooper, described above, was convicted of unlawfully beating his shackled prisoner to death. He also was convicted, with a second state trooper, of conspiring to obstruct justice by covering up evidence of the fatal beating and of committing perjury before the grand jury. Previous attempts by local authorities to prosecute this incident had been unsuccessful.

As a result of a continuing federal effort to curtail police misconduct in Puerto Rico, five police officers were convicted and two others pled guilty in 1986. In one case, four officers arrested several unarmed youths suspected of possessing marijuana. When one of the suspects fled, a police officer shot him in the head, killing him. The federal civil rights investigation subsequently revealed that three other officers assisted the shooting officer in covering up the incident, and that as a consequence, the local prosecution of the killing had resulted in that officer's acquittal. Ul-

timately, a federal grand jury indicted all four officers; two pled guilty and two were convicted by a jury. The police officer who actually shot the youth was sentenced to 20 years in prison.

In another case, three young men detained by three Puerto Rico narcotics detectives were repeatedly beaten and were forced by the detectives to beat one another with a wooden club, causing injuries that resulted in the death of one of the victims. Although the defendants were tried and convicted locally before a judge, they were sentenced to probation. A subsequent federal prosecution resulted in the conviction of all three defendants on all counts, with two defendants receiving prison terms of 99 years and 30 years respectively.

In the North Carolina incident mentioned earlier, where two shackled inmates were brutally and severely beaten, those indicted for the beatings and related charges — the superintendent of the state correctional institution and five other correctional officers — were all convicted. Prior to trial four of the defendants pled guilty. They then testified for the government during the successful trial of the superintendent for conspiracy to violate the rights of the prisoners. The remaining defendant, the assistant superintendent of the prison, was convicted of perjury at a separate trial.

Involuntary Servitude

The Division also has responsibility for cases involving violations of the peonage and involuntary servitude statutes designed principally to deter the victimization of migrant workers and others held in bondage. One recent prosecution under these statutes, involving the smuggling of Indonesian laborers into the United States to perform domestic work, resulted in two convictions after a month-long trial. A guilty plea was subsequently obtained from a third defendant who had been a fugitive. In another such case, a wealthy homeowner who recruited young, illegal alien females to perform domestic work in homes in California, Nevada, and Hawaii, and who coerced the victims to work without pay and against their will, was convicted of numerous felonies. The defendant's spouse pled guilty to misprision of a felony prior to trial.

And, in yet another involuntary servitude prosecution (noted above), eight members of the religious cult, the "House of Judah," were convicted in the Western District of Michigan for conspiring to hold children in involuntary servitude and for the actual enslavement of one child. The children of members of the cult were physically punished by members other than their parents if their work duties were not performed "satisfactorily." One child was so severely beaten with an axe handle by several cult members that he later died from the injuries he sustained. Eleven other children were medically examined and found to have been physically abused, one child with facial burns from an iron. Although the mother of the victim who died had been convicted of manslaughter by the state for her participation in the beating death of her son, the state prosecution of several other cult members, including the leader known as "the Prophet," had been unsuccessful, thus warranting the federal prosecution effort.

Conclusion

The prosecution of criminal civil rights cases at either the state or federal level is not easy. Frequently, the defendants are aligned with law enforcement agencies that choose to provide them with blind and unwavering support. In addition, these law enforcement agencies are entities with which the investigators and prosecutors must maintain an ongoing professional relationship. Often there is opposition to the imposition of criminal sanctions on defendants who are not "traditional" criminals. Victims of these crimes also may be persons with whom the majority of persons in our society have little in common. Nonetheless, many state and local officials do pursue criminal sanctions for those who violate individual rights. But, when state and local prosecution is not successful, or does not sufficiently redress the injuries suffered by the victims, federal action can and will be vigorously pursued. Years of experience clearly teach that without a vigorous federal effort many violations would go uninvestigated or without remedy.

The record establishes that our efforts to locate and remedy civil rights abuses are consistently improving. With support of the Congress, the Federal Bureau of Investigation, and state and local law enforcement officials, they will continue to improve.

The criminal abuse of individual rights is not endemic or epidemic in this country, but it does exist. Each incident is a cancer in our society that must be treated promptly and removed entirely. It is the task of the Division to identify and address those abuses through unflagging enforcement of the federal criminal civil rights laws. We can take considerable pride in the unprecedented record compiled to date in carrying out that crucially important mission of the Department of Justice.

(II–A)

CRIMINAL CIVIL RIGHTS PROSECUTIONS
BY STATE AND TERRITORY
JANUARY 20, 1981 – JANUARY 31, 1987

☐ STATES IN WHICH THE UNITED STATES HAS BROUGHT CRIMINAL PROSECUTIONS

◆ REPRESENTS STATES IN WHICH THE UNITED STATES HAS PROSECUTED RACIAL VIOLENCE CASES.

CRIMINAL CIVIL RIGHTS ACTIVITIES
OCTOBER 1, 1977 THROUGH JANUARY 31, 1987

INVESTIGATIONS AND PROSECUTIONS

FISCAL YEAR	MATTERS INVESTIGATED	CASES FILED	DEFENDANTS CHARGED	SUCCESS RATE (%)
87	959	16	30	95
86	2,792	49	112	82
85	2,970	45	106	78
84	3,410	47	94	80
83	3,259	39	85	79
82	3,227	56	98	58
81	3,390	42	80	67
80	3,224	42	77	77
79	3,103	50	122	47
78	3,130	36	66	68
77	3,173	28	73	71

PROSECUTIONS INVOLVING RACIAL VIOLENCE

FISCAL YEAR	RACIAL VIOLENCE CASES WITH KKK DEFENDANTS		NON-KKK DEFENDANT RACIAL VIOLENCE CASES		TOTAL NUMBER OF RACIAL VIOLENCE CASES	
	CASES	DEFTS.	CASES	DEFTS.	CASES	DEFTS.
87	2	6	2	2	4	8
86	2	13	5	8	7	21
85	6	16	5	14	11	30
84	5	17	8	19	13	36
83	4	12	6	11	10	23
82	4	7	4	7	8	14
81	2	5	2	2	4	7
80	6	11	3	5	9	16
79	2	23	3	3	5	26
78	0	0	4	6	4	6
77	0	0	4	8	4	8

Educational Opportunities

More than thirty years have elapsed since the Supreme Court's landmark decision in *Brown* v. *Board of Education*, 349 U.S. 294 (1954). During that period, the vast majority of school districts have been placed under administrative or judicial orders designed to secure compliance with the mandate of *Brown, i.e.*, the removal of racially discriminatory barriers that stand in the way of a full enjoyment by all school children of equal educational opportunities in the public schools of this country. Thus, in recent years, the nature of school desegregation litigation has changed: there are few occasions requiring the filing of new school desegregation cases.

Accordingly, the work of the Division in enforcing federal statutes that require nondiscrimination in public education, including Title IV of the Civil Rights Act of 1964 and the Equal Educational Opportunities Act of 1974, has focused on "second-generation" desegregation issues. Such issues include quality education for students in predominantly minority schools, needed improvements at long-unattended facilities and physical plants of predominantly minority schools, and the illegal use of race-conscious quotas or goals in admitting students to certain academic programs or assigning faculty to certain schools. In those desegregation cases to which the Division has been a party since 1981, we have been in the forefront in urging adoption of viable and effective remedies — alternatives to mandatory busing — that promote desegregation and quality education.

Moreover, a significant aspect of the Division's enforcement of equal educational opportunities statutes is its close and continued monitoring of compliance by the over 350 school districts under existing desegregation orders and decrees (see Appendix III-A, Educational Opportunities Enforcement, January 20, 1981 through January 31, 1987). As part of that monitoring activity, the Division has sought to return operating responsibility of the school system to local authorities where a desegregation plan has been successfully in place for a number of years and it has been determined that compliance with the outstanding court order has been achieved to the fullest extent practicable.

Finally, a certain amount of resources are devoted to defending the Department of Education in cases generally brought by local school districts seeking to enjoin DOE from carrying out its enforcement responsibilities.

Education Litigation

In enforcing federal statutes that prohibit discrimination in public education on the basis of race, sex, national origin, color, religion or handicap status, the Division's litigation efforts fall into three major categories: elementary and secondary school cases; higher education cases; and monitoring of outstanding court orders.

The elementary and secondary school lawsuits brought by the Division involve a range of problems, as exemplified by the following cases:

- In 1983, the Division received a complaint from black parents in Richland Parish, Louisiana, who alleged that school officials were maintaining predominantly black and predominantly white schools; that white students who lived in a school attendance zone served by a predominantly black school were transferring illegally to predominantly white schools; and that the school officials were hiring and assigning teachers on a racially discriminatory basis. The United States filed suit and negotiated a consent decree with the district requiring that teachers be hired and assigned on a nondiscriminatory basis; that an address verification system be implemented to insure that all students attend their proper schools; that the predominantly black school, which had inferior facilities, be replaced with a new facility; and that two blacks who had been improperly passed over for principalships be promoted to principal or an equivalent position.

- In 1985, the United States filed a complaint against the Phoenix, Arizona, High School District, pursuant to a referral from the Department of Education. Our complaint alleged that the school district was maintaining two high schools for minority students—blacks and Hispanics. The school district and the United States entered into a consent decree that required the two schools in question to be desegregated by converting them to magnet schools.

- In Yonkers, New York, the United States filed suit against the Yonkers Board of Education and the city of Yonkers and its community development agency alleging that the defendants had intentionally caused racial segregation in the Yonkers public schools, and that the city and the community development agency had engaged in a pattern and practice of discriminatory housing development that promoted segregation of

both the public schools and subsidized housing. After 2 1/2 years of discovery and a 90-day trial, the district court issued a 600-page opinion finding defendants liable for systemwide racial segregation of the Yonkers public schools and for discriminating in selection and support for sites for subsidized housing. The court concluded that the board had engaged in a series of intentionally segregative decisions concerning school openings, closings, attendance zones, and the assignment of faculty and staff. The desegregation plan approved by the court requires the board to reduce racial and ethnic isolation by operating four magnet schools without specific attendance zones, and a number of attendance-area magnet schools with specified programs (including a scholastic academy, creative arts/extended day, Montessori, computer instruction, pre-professional performing arts, communications arts, and multilanguage options).

Although discriminatory admission policies of formerly segregated public colleges and universities were abolished long ago, racial differences in opportunity have lingered, and the Division has been active in a number of higher education cases that address these problems. Our major litigation activity has focused on cases involving the statewide higher education systems of Louisiana, Mississippi and Alabama. In addition, we have been instrumental in the ongoing desegregation efforts involving colleges and universities in Tennessee and Maryland.

In Alabama, we negotiated consent decrees with four of the defendant institutions requiring the implementation of a plan designed to increase minority student enrollment and to increase minority faculty and administrators. The consent decree signed with the University of South Alabama also contains a pre-professional program designed to create a pool of qualified minority students who will be eligible to enroll in the university's medical school, through summer workshops designed to enhance academic skills. Moreover, because few blacks historically have obtained doctoral degrees, thus contributing to the difficulty of blacks' achieving academic professorships, the consent decrees signed by these universities contain faculty development, recruitment, and nondiscriminatory scholarship programs designed to increase the number of blacks who advance in academia.

In Louisiana, similar doctoral degree provisions were negotiated in a comprehensive settlement agreement with the State. In five years, 14 persons graduated from doctoral degree programs under the Louisiana consent decree program and 16 others are currently participating in the program.

Additionally, the Division has obtained relief for women applicants who were discriminatorily denied admission to an institution of higher education. In *United States* v. *Massachusetts Maritime Academy,* the court issued an opinion on March 22, 1984, that found that the defendant Academy had engaged in intentional discrimination against women with respect to recruitment and admissions, and that the effects of the Academy's discriminatory practices had not been eliminated. The defendant Academy appealed and the court of appeals affirmed the district court. Subsequently, the Academy implemented a plan designed to correct its discriminatory admissions and recruitment practices. Recently, the United States and the Academy agreed on a procedure to be used by the Academy in identifying and admitting women applicants who had been discriminatorily denied admission between 1983-1985.

Monitoring of School Desegregation Plans

One of the primary responsibilities of the Division in ensuring equal educational opportunities is its monitoring school districts' compliance with school desegregation orders — involving over 350 school districts — in cases in which the United States is a party. The Division has established a separate component to handle this important function and has developed an effective computerized system for analyzing the compliance reports submitted by the districts.

The result is a more coordinated, systematic and efficient approach to our compliance work. The Division now has better access to compliance information and the ability to identify possible problem areas. For example, our recent review of the reports of one district revealed a problem with racially segregated classrooms. We worked with the local authorities to structure a new student placement method which, we believe, will result in fewer racially polarized classrooms.

The Division has also reviewed many proposals to modify court-ordered desegregation plans, including motions for permission to close schools, to change boundary lines or otherwise to modify plans. Our practice has been to encourage early discussions with a district to prevent unnecessary litigation. Through our computerized monitoring system, we are now able to review these proposals thoroughly and quickly. In many cases, we have been able to work out modification agreements with the districts which result in prompt court approval.

Occasionally, school boards have requested that a school system be declared "unitary" with operating authority returned to locally elected school officials. Each case is carefully reviewed to determine whether the past segregation practices have been successfully eliminated, whether there has been good faith compliance with the decree to the fullest extent practicable, whether any recent acts of discrimination have occurred, or whether there is

any other reason for continuing court supervision. When we are satisfied that judicial supervision and control over a school system that has been subject to a desegregation order for a number of years are no longer warranted, we have supported the school board's efforts to return the school system to local control. Such was the case with our *amicus* participation in the recent litigation involving the Norfolk, Virginia, school district, *Riddick* v. *City of Norfolk*, 784 F.2d 521 (4th Cir. 1984), *cert. denied*, 55 U.S.L.W. 3316 (U.S. Nov. 3, 1986). Of course, where we remain unpersuaded that the requisite showing can be made by school authorities seeking to bring to an end outstanding desegregation orders, we will oppose efforts to declare the system unitary.

Magnet Schools

Since 1981, the Division has played a lead role in exploring and urging upon courts and school districts remedial alternatives to mandatory busing, alternatives designed to achieve meaningful desegregation in an enhanced educational environment. To this end, we have fashioned a workable blueprint for constitutional compliance through combinations of devices such as school closings, boundary adjustments, magnet school plans, and incentives for voluntary transfer. Although differently packaged from locale to locale, the essential thrust of the magnet idea fits virtually every situation: it is, in simplest terms, to provide educational incentives through use of intellectually exciting and academically fulfilling curriculum and extracurriculum program offerings, which are strategically placed throughout the public school system so as to attract minority and nonminority students to enroll in the magnet schools and programs by choice. We have found that such programs, if carefully devised and enthusiastically supported by the school officials and the community, not only enhance student motivation but also have a positive desegregative impact by drawing students, irrespective of race, to a particular curriculum. The magnet programs implemented over the past five years have ranged from enhanced academic programs for the gifted and talented to a program emphasizing environmental education and athletics; from computer science programs to programs for the performing arts. The key, however, to each of these magnet programs is the educational incentives provided by a curriculum package that attracts students of all races.

Notwithstanding initial criticism, it now appears that this alternative formula has gained widespread acceptance by litigants and courts alike as a more effective desegregation technique. In cities as diverse as Chicago, Illinois, and Bakersfield, California, plans conceived with the help of local educators are beginning to work. Nonminority enrollment losses occasioned by mandatory busing plans have begun to decline; educational quality is improving; parental involvement has increased; and positive, stable desegregation results are being achieved.

We are encouraged by these developments and plan to continue and expand this effort. To date, the Division has successfully urged district courts in 19 cases to approve magnet school programs as part of an effective desegregation remedy (see Appendix III-B, School Desegregation Cases with Magnet Schools/Programs as Remedial Components Since 1981).

For example, in Ector County, Texas, eight racially identifiable schools were converted to magnet schools beginning in 1982. In the 1985-1986 school year, each of the schools had become fully desegregated. Three schools, which had less than 5% white student enrollment in the 1983-1984 school year, achieved greater than a 40% white student enrollment in the 1985-1986 school year, and three schools, which had approximately a 20% minority student enrollment in the 1983-1984 school year, attained approximately a 50% minority student enrollment in the 1985-1986 school year.

In Marion County, Florida, a formerly all-black school was converted to a magnet. Upon implementation of the magnet school — Basics Plus — the school filled to capacity with a 70% white, 30% black student enrollment. Student demand was so great that school officials have a waiting list of students desiring to enroll in the school.

And, in Chicago, in addition to operating 32 full-size magnet schools, the school board has installed magnet programs within regular schools at 60 sites. Each program is tailored to reach or maintain stable levels of desegregation within the school as a whole and may, for example, involve as little as an intensive Spanish class to attract black, white, and Asian students to what would otherwise be an all-Hispanic school, or several classes composing a fine arts curriculum.

Since 1981, magnets also have been adopted in a number of cases in which the United States is not a party. For example, Prince Georges County, Maryland, was ordered by the court to develop and implement a modified desegregation plan. A busing plan developed by a nationally known desegregation expert was rejected by the school officials and by the community and a magnet school plan was later adopted. The plan has apparently proven to be a success. Recently school officials announced that nine additional magnets would be implemented during the next few years to accommodate the many students whose names had been placed on waiting lists. Similar successes are reported in San Diego, California, Milwaukee, Wisconsin, Portland, Oregon, and San Jose, California.

Conclusion

Magnet schools have proven to be a viable alternative desegregation remedial component for many school systems. We are continuing to explore with a number of school officials, corporate executives, communication experts and education authorities ways to improve, enhance, refine and further develop the magnet concept so that it is economically attractive on a more widespread basis to public school systems throughout the country that are interested in providing parents and students alike, irrespective of race, color or ethnic background, a quality educational opportunity in an academic environment fully responsive to the desegregation directive of *Brown* v. *Board of Education*.

CIVIL RIGHTS DIVISION

EDUCATIONAL OPPORTUNITIES ENFORCEMENT

JANUARY 20, 1981 – JANUARY 31, 1987

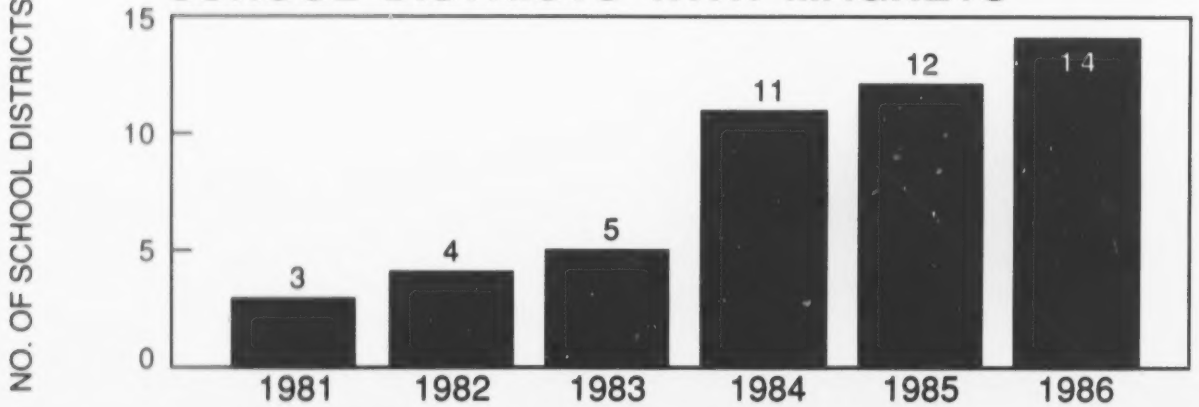
- ☐ STATES IN WHICH CASES ARE BEING MONITORED
- ■ STATES IN WHICH INVESTIGATIONS ARE PENDING
- ■ STATES WITH INVESTIGATIONS AND MONITORING ACTIVITIES
- • DENOTES STATES IN WHICH THE UNITED STATES HAS FILED LAWSUITS SINCE 1981.

(III – A)

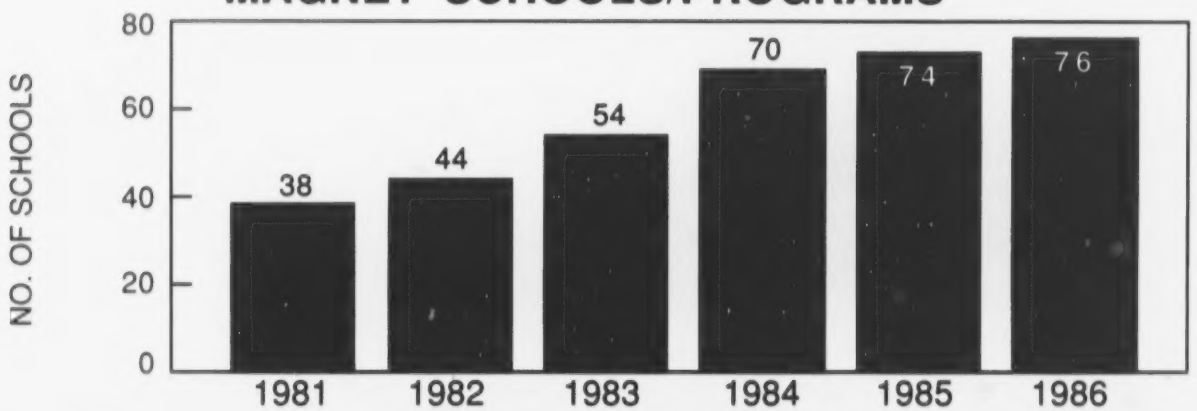
CIVIL RIGHTS DIVISION

SCHOOL DESEGREGATION CASES WITH MAGNET SCHOOLS/PROGRAMS AS REMEDIAL COMPONENTS SINCE 1981 (CUMULATIVE)

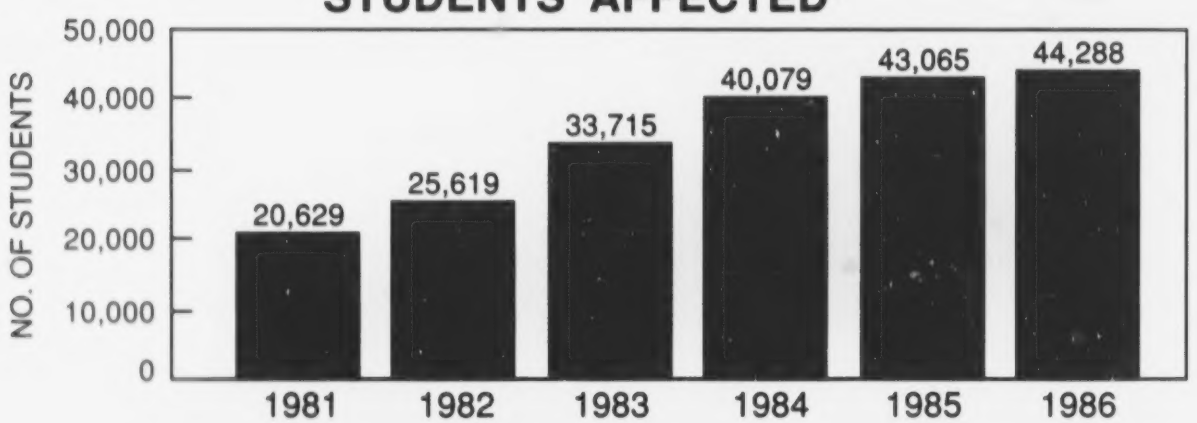
SCHOOL DISTRICTS WITH MAGNETS



MAGNET SCHOOLS/PROGRAMS



STUDENTS AFFECTED*



*Student enrollment unavailable for Huntsville, Alabama and Big Spring, Texas for 1985.

Equal Employment Opportunities

The Division has enforcement responsibility under Title VII of the Civil Rights Act of 1964 (as amended by the Equal Employment Opportunity Act of 1972 and the Pregnancy Discrimination Act of 1978), the State and Local Fiscal Assistance Act, and other federal laws prohibiting employment practices which discriminate on grounds of race, sex, religion and national origin. Its jurisdiction under these statutes is limited, however, to litigation concerning the practices of state and local government employers and, in a few circumstances, federal contractors.[1] In addition, upon referral by the Department of Labor, the Division prosecutes employment discrimination litigation against federal contractors under Executive Order 11246, as amended, and it represents the Department of Labor and other federal agencies as defendants when such agencies are sued for alleged overzealous enforcement of federal laws prohibiting discriminatory employment practices or when their administrative determinations are challenged through judicial review.

Employment Discrimination

Federal law requires equal employment opportunity, without discrimination on grounds of race, sex, religion or national origin. While the ideal of equal employment opportunity has wide verbal support, strict adherence to this federal mandate is not always as widespread.

Nonetheless, enormous strides have been made by state and local governments in providing equal employment opportunities for blacks, women, Hispanics and other minorities since the 1972 amendments to Title VII which broadened its coverage to reach public employers. Some of that improvement has occurred through litigation, some as a result of independent decision-making by the governmental unit involved, and some through a combination of those factors. While the progress has been substantial, it has unfortunately been uneven and sporadic. It appears, for example, to have been most evident in the center cities of large metropolitan areas and other units of government with a substantial proportion of minority voters. Even in those governments, however, resistance to that progress has at times been evident particularly in fire, police, and highway departments. This resistance has been triggered in part by local affirmative action plans and consent decrees which, through use of so-called goals-and-timetables or quotas, grant discriminatory employment preferences in promotions and hiring based upon race, sex or national origin. Strong resistance to minority employment has also persisted in many all-white suburban communities, which have sought to avoid the employment of minorities through durational residency requirements, recruitment directed at white communities only, and other racial techniques. And, in traditionally male jobs, such as fire fighter, prison guard and deputy sheriff, particularly in rural and certain suburban areas, discrimination against women frequently persists.

While some employment discrimination by public employers is and can be addressed privately through individual complaints (filed with the EEOC and then referred to the Department of Justice), all too often individual enforcement of federal equal employment opportunity laws is confronted with almost insurmountable legal costs and fees involved in developing and litigating the case. The Division can therefore play a critical role in enforcing Title VII and ensuring equal employment opportunities for all individuals through the investigations and enforcement actions it initiates (see Appendix IV-A, Employment Discrimination Cases Filed January 20, 1981 through January 31, 1987).

A few examples of the kinds of problems the Division has encountered over the last several years through its investigations and information generated through litigation are illustrative:

- Fourteen Cook County municipalities adjoining or close to Chicago had over 2,300 municipal employees, of which not one was black; and 15 suburban Detroit municipalities in Wayne, Oakland and Macomb counties had approximately 7,000 employees, of which not more than two, or 0.03%, were black.

- Four large suburban school districts in the Atlanta and Houston areas discriminated against blacks in recruitment and hiring.

- The departments of corrections of Florida, Indiana and Massachusetts and the prisons of Philadelphia followed the practice of hiring and assigning correctional officers on the basis of sex, thereby sharply limiting the employment and promotional opportunities of women.

[1]Title VII vests responsibility for its enforcement against private employers, labor organizations and employment agencies in the Equal Employment Opportunity Commission.

- The police departments of Nassau County and Suffolk County (New York), the seventh and twelfth largest police departments in the country, and the state police agencies of Maine, Massachusetts, New Hampshire, Rhode Island and Vermont employed numerous recruitment, testing and hiring practices which discriminated against women, blacks, and Hispanics.

Employment Litigation and Enforcement Efforts

The Division's response to these problems and its enforcement efforts designed to secure equal employment opportunities for all individuals have produced a record in which the Department and Division can take great pride. Since 1981, the Division has not only substantially increased the average number of annual case filings over earlier periods—the overwhelming majority of which (over 97%) challenge discriminatory employment practices against racial, ethnic and religious minorities and/or women—but has also significantly increased the amounts of back pay awarded to victims of discriminatory practices. For example, in the four calendar years from 1977 through 1980, the Division filed a total of forty (40) new cases, or an average of ten (10) per year. For the calendar years 1981 through 1986, however, we filed a total of eighty-seven (87) new cases, or an average of fourteen and a half (14.5) new cases a year (see Appendix IV-B, Employment Discrimination Cases Filed January 20, 1977 through December 31, 1986). Similarly, for the same period 1977 through 1980, we obtained consent decrees providing about $7.5 million in back pay to the victims of past discriminatory practices, or an average of $1.88 million in back pay awards per year, while from 1981 through 1986 we obtained consent decrees providing $16.3 million in back pay, or an average of $2.71 million in back pay awards per year (see Appendix IV-C, Employment Back Pay Awards, January 20, 1977 through December 31, 1986).

Statistics alone tell only a small part of the story. The precedential effect and deterrent results of our litigation and enforcement efforts, while not quantifiable, certainly represent an important measure of the Division's success in the equal employment opportunity arena.

- For example, in response to the discriminatory durational residency requirements for application for municipal employment and other related discriminatory practices by virtually all-white suburbs of Chicago, which operated to exclude all or substantially all black applicants from competing for municipal jobs, the Division initially prosecuted the first of these cases, *United States* v. *Town of Cicero*. (The *Cicero* case also included claims of housing discrimination, making this the first case in which the Division alleged both employment and housing discrimination in the same case). Following a successful appeal from the district court's denial of our motion for a preliminary injunction, in late 1985 and 1986, we filed 13 additional suits against Cook County municipalities under this program. In the *Cicero* case itself, and in 10 of the more recently filed cases, we now have consent decrees or judgments in place eliminating the discriminatory durational residency requirements and establishing aggressive recruitment programs directed toward the previously excluded black applicants.

- Through investigations, we also found that many of the Detroit suburbs had employment practices and profiles similar to those in the Chicago suburbs. As of January 31, 1987, suits against 10 such suburban municipalities have been filed and decrees obtained in four of them; an additional five suits against such municipalities have been authorized.[2]

- Our litigation program involving suburban municipal employers also resulted in a consent decree, after a trial and finding of liability on a government-wide basis, against the County of Fairfax (Virginia), calling for $2,750,000 in back pay to be distributed among 695 identified victims of discrimination, with priority job offers to many of these who were still interested in employment. This represents the largest back pay award ever obtained against a municipal defendant in a Title VII case.

- Our school district program included suits against four large suburban school districts, two in the Atlanta area, which have resulted in decrees, and two in the Houston area, which are still in litigation. In each of these cases, we found recruitment and hiring practices which discriminated against qualified black applicants for teaching positions.

- We brought nine suits to enforce the terms of the Pregnancy Discrimination Act, of which we have obtained decrees in eight, including a litigated decision providing $2,095,810 in back pay to 4,961 women, who were harmed by operation of a state temporary disability law which granted lower benefits to women disabled by pregnancy than to employees otherwise disabled. The other seven cases involved the firing of women because of pregnancy or, more frequently, the granting of lesser benefits to women because of pregnancy than to other employees disabled by other conditions.

- We brought suits and obtained decrees against seven state police agencies challenging recruitment and

[2]These five additional suits were filed on February 5 and 6, 1987.

hiring practices which discriminate against women; and, in two of these suits, practices which also discriminate against blacks.

- In 1983, we filed suit against the city of Gallup, New Mexico, alleging systemic discrimination against American Indians and obtained in 1986, shortly before the scheduled trial date, a consent decree, which provides for $750,000 in back pay and priority job offers with retroactive seniority to at least 225 American Indians and three non-Indian women. We believe this decree provides the most thorough relief and the greatest amount of back pay for American Indians in any employment discrimination case.

- We also filed our first suit seeking relief from discrimination by a municipal fire department against individuals of the Jewish religion, and our first suit seeking relief from discrimination by a school board on account of Iraqi national origin. Consent decrees have been entered in both suits.

Since 1981, we have had district courts rule against us on the merits in only four employment cases, and in two of those four cases, we later prevailed in the Supreme Court[3] or in the Court of Appeals for the Fourth Circuit.[4] A third case is presently on appeal to the Eleventh Circuit.[5] Thus, in only one case have we had a final loss on the merits.[6] Indeed, the great majority of our cases settle on terms that guarantee an end to discriminatory practices and "make whole" relief to identifiable victims — which generally result in substantial cost-savings to all parties.

Of approximately 53 suits in which we have represented federal agencies as defendants since January 20, 1981, we have prevailed either procedurally or on the merits in 46; we have lost one such case; and the remaining six are pending.

Another, perhaps more important measure of success is the change in the employment picture of employers subject to our consent decrees. Enforcement of the decrees previously obtained has long been an important component of our litigation. Our experience has been that entry of the decree in many cases is only the first step in the process of securing compliance with the law.[7] The number of decrees we enforce has risen from approximately 85 in January 1981, to 142 at the present time (see Appendix IV-D, Employment Consent Decrees Entered January 20, 1977 through December 31, 1986).

A review of compliance reports from 51 decrees involving hiring and recruitment practices, which were entered prior to 1984 and continue to have operative effect, discloses that there has been substantial progress under most of our decrees in the recruitment and hiring of persons in the group or groups of discriminatees. In many of the decrees, the results have literally transformed the nature of the employer's work force. And, importantly, these results have been obtained in decrees entered since September 1981 without the use of hiring goals or employment quotas. Since September 1981, we have not sought as a court-ordered remedy, nor negotiated as part of our decrees, annual hiring goals. Yet, with the strict injunctive provisions prohibiting all forms of employment discrimination by the employer, make-whole relief for all identifiable victims of discrimination, rigorous affirmative action measures requiring recruitment, training, and outreach programs, and extensive reporting requirements, the employers under our decrees have achieved considerable success at integrating their work forces without the stigmatizing and discriminatory effects of employment preferences favoring a limited number of certain groups on the basis of race, sex or national origin.

Our decrees have the virtue of insuring that employment decisions are made on a *nondiscriminatory* basis, by utilizing affirmative action recruitment and outreach programs that open doors of opportunity to all individuals, without regard to race and sex. Moreover, we have found that such affirmative techniques have helped to bring increasing numbers of minorities and women into the work force.

Conclusion

The Supreme Court clearly admonished last Term that preferential goals and timetables are not be used except in

[3] *Bazemore* v. *Friday*, 54 U.S.L.W. 4972 (U.S. July 1, 1986) (pending in the 4th Cir. as Nos. 82-1873, 82-1927, and 82-2065).

[4] *United States* v. *Gregory, Sheriff of Patrick Co.*, 38 Empl. Prac. Dec. Par. 35,577 (4th Cir. 1985).

[5] *Wilks and United States* v. *Arrington*, No. 86-7108 (pending in the 11th Cir.).

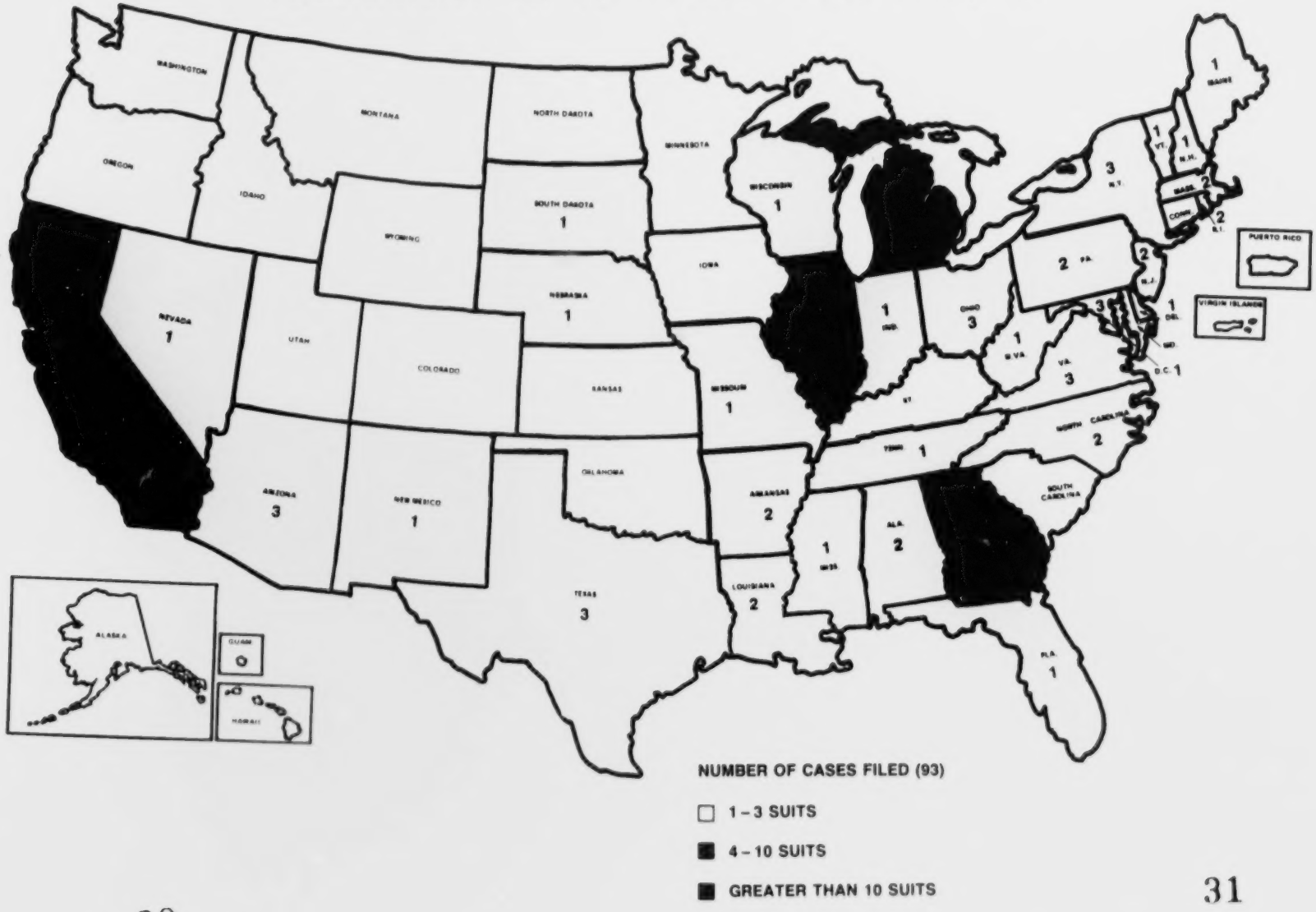
[6] *United States* v. *Texas Highway Department*, Civ. No. A-78-287 (W.D. Tex. 1982) (decision denying relief dated August 17, 1982). In addition, we lost one Pregnancy Discrimination Act case on a procedural point, although our investigation and suit resulted in the victims of the employer's practice receiving most of the relief to which they were entitled. See *United States* v. *Glendale*, Civil No. 84-0682(R) (C.D. Cal. 1984) (filed February 2, 1984; summary judgment entered April 2, 1984).

[7] In conjunction with our monitoring of decrees to ensure compliance with the law, following the Supreme Court's decision in *Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561 (1984), we undertook a review of our outstanding and operative decrees to determine whether modification was required in light of our reading of this decision as precluding a court's ordering, as a remedy, any preferences in hiring or promotions based on race, sex or national origin to persons other than identifiable victims of the employer's discrimination. This initiative was held in abeyance pending the Supreme Court's resolution of the issue. Ultimately, the Supreme Court ruled that such preferential relief was available only rarely and in certain very limited circumstances. As a consequence, it was determined that the decrees could appropriately be read in a manner wholly consistent with the Supreme Court's ruling without requiring modification.

the most egregious and flagrant cases of discrimination and only as a last resort — and then only in the most "narrowly tailored" manner to ensure minimal interference with the rights of innocent third parties. The relief required in our consent decrees provides a viable "affirmative action" alternative that is plainly less intrusive and has proven most effective. It has, moreover, not only served to redress the unlawful conduct of the targeted employer and its continuing effects; more generally, it has helped to refocus attitudes in the employment areas so that the emphasis is once again a positive one centered on *individual* rights and equal *opportunity*, rather than a negative one centered on *group* entitlements and equal *results*.

CIVIL RIGHTS DIVISION

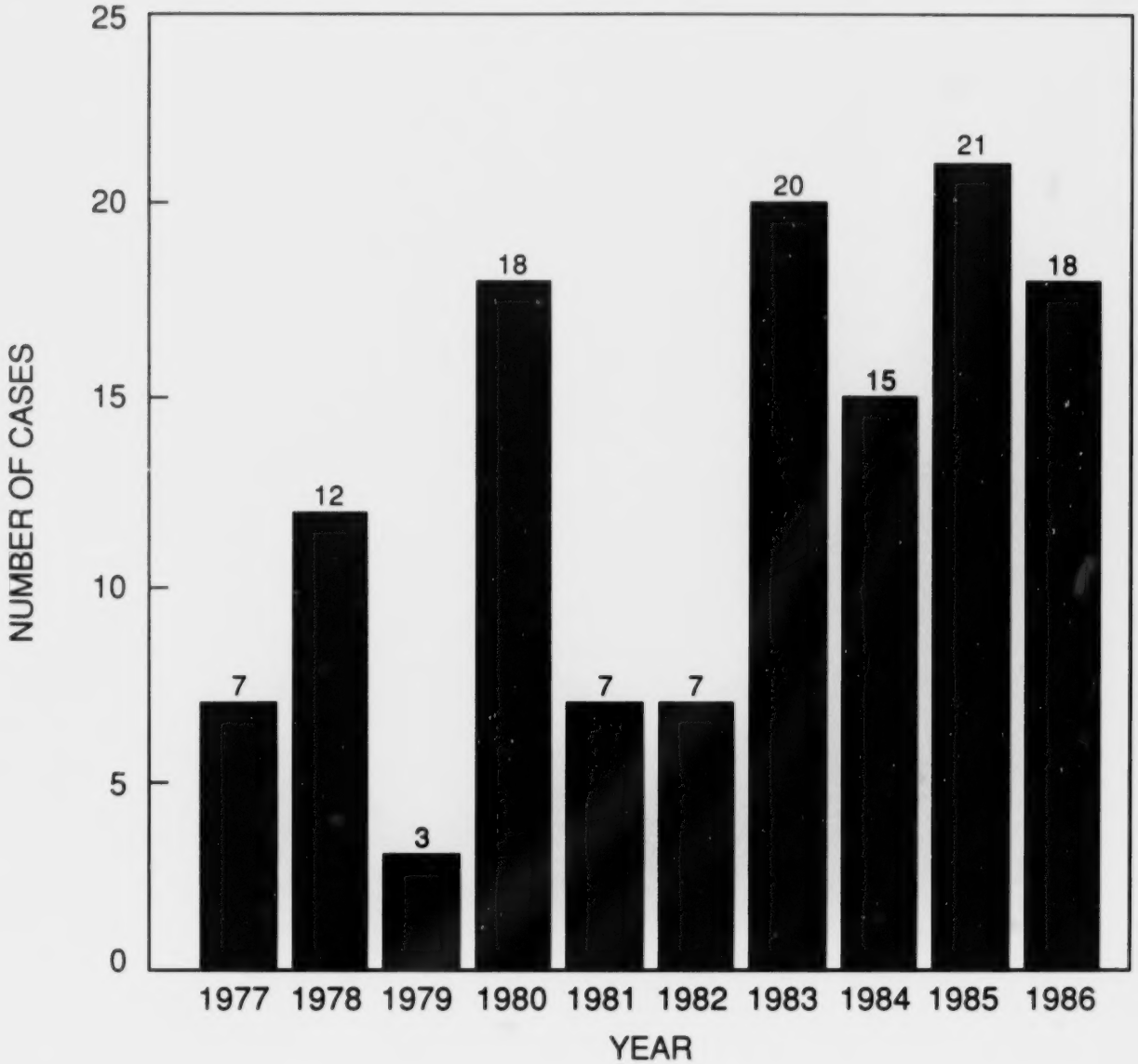
EMPLOYMENT DISCRIMINATION CASES
FILED JANUARY 20, 1981 THROUGH JANUARY 31, 1987



(IV-A)

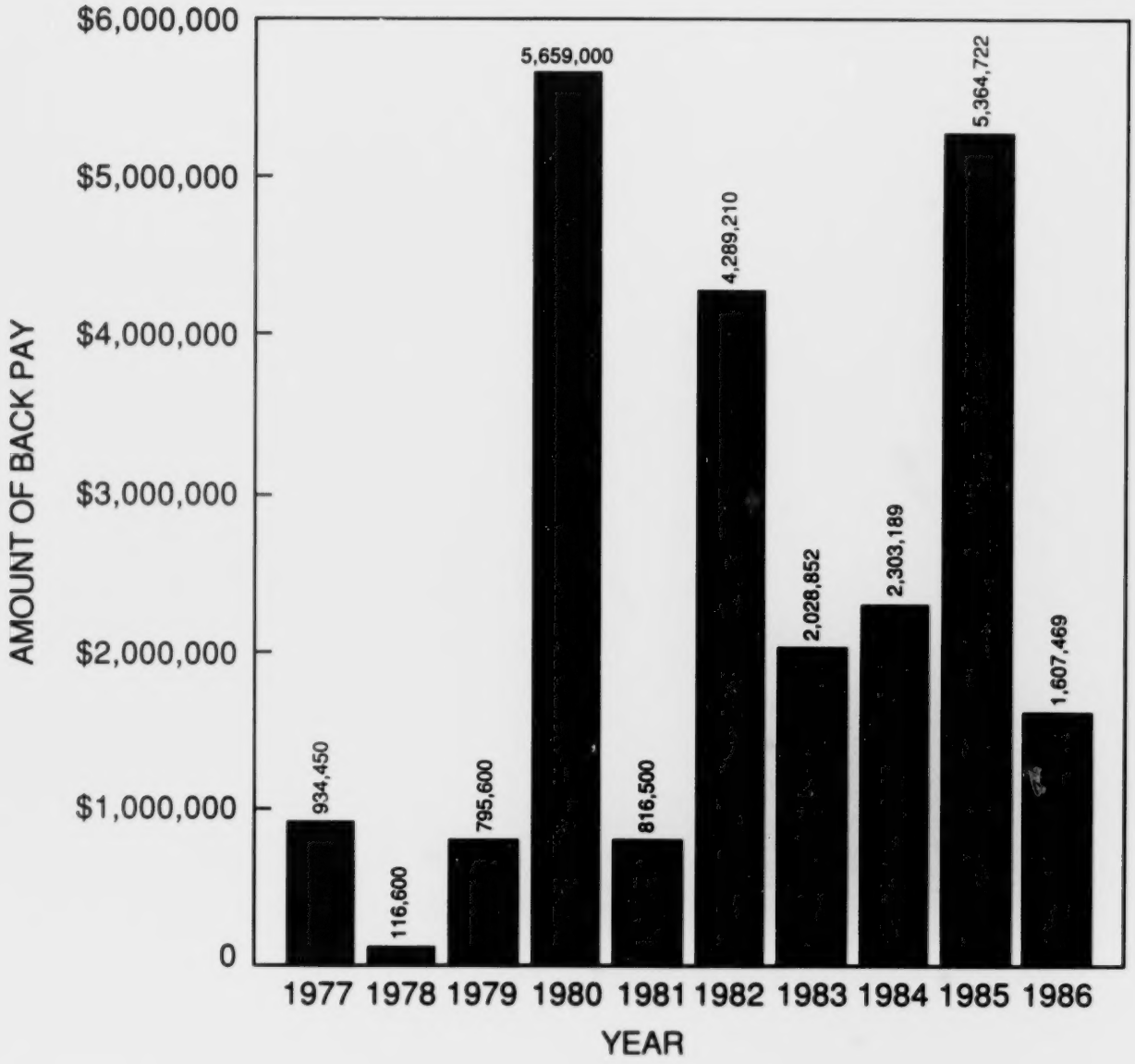
CIVIL RIGHTS DIVISION

EMPLOYMENT DISCRIMINATION CASES FILED
JANUARY 20, 1977 THROUGH DECEMBER 31, 1986



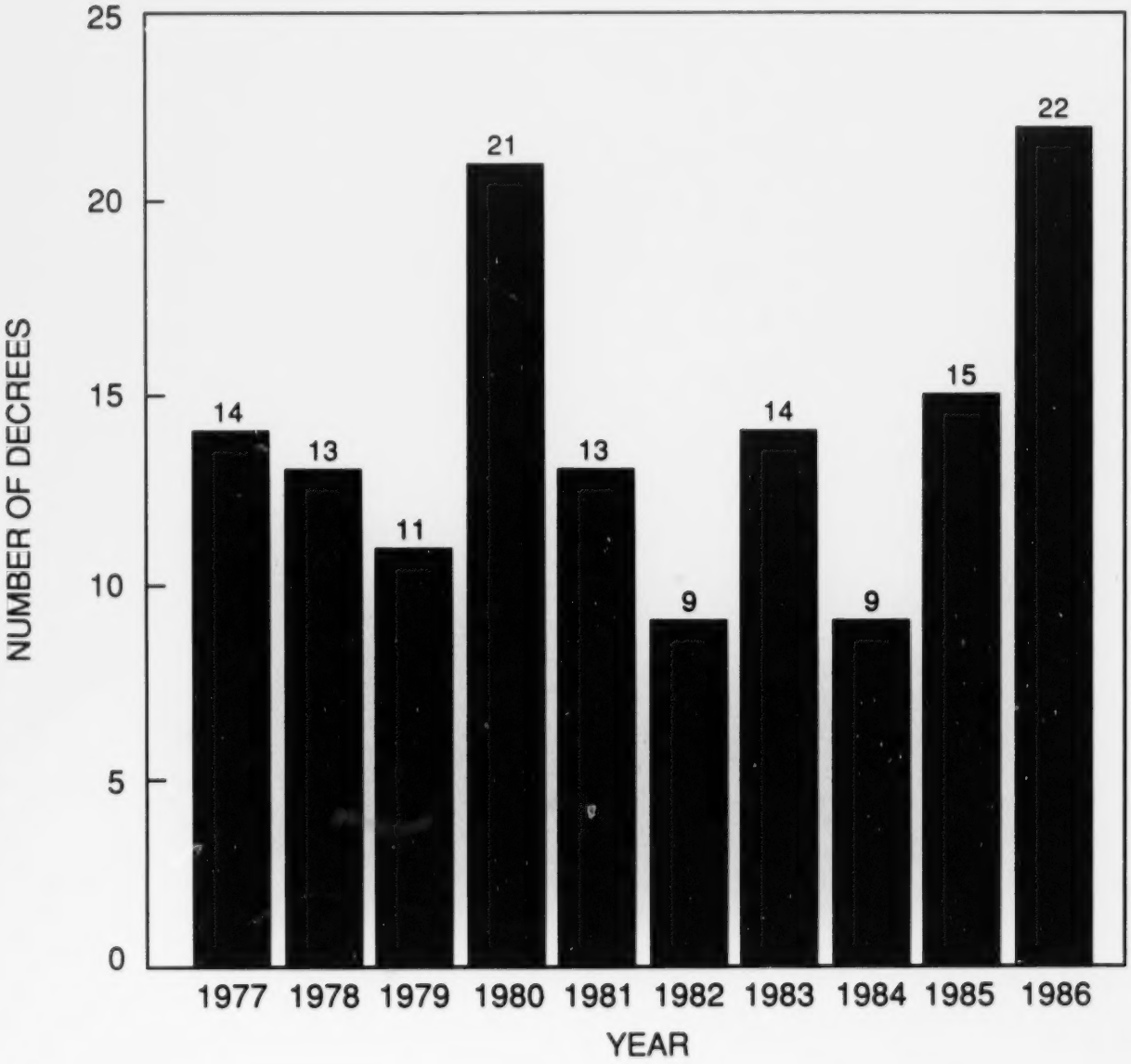
CIVIL RIGHTS DIVISION

EMPLOYMENT BACK PAY AWARDS
JANUARY 20, 1977 THROUGH DECEMBER 31, 1986



CIVIL RIGHTS DIVISION

EMPLOYMENT CONSENT DECREES ENTERED
JANUARY 20, 1977 THROUGH DECEMBER 31, 1986



Fair Housing/Consumer Credit/Public Accommodations

As part of a general reorganization within the Civil Rights Division, the Housing and Civil Enforcement Section was created in November 1983 to accomplish more effective enforcement of the federal statutes prohibiting discrimination in housing, consumer credit, and public accommodations.

As its name suggests, this new Section has principal responsibility for enforcing the Fair Housing Act of 1968, which prohibits discrimination in housing on the basis of race, color, religion, sex and national origin. The statute authorizes the Attorney General to file suit where there is a pattern or practice of discrimination or where a group of persons has been denied rights guaranteed by the Act. In addition, the Section enforces the Equal Credit Opportunity Act (ECOA), prohibiting discrimination in credit transactions, and it coordinates with the United States Attorneys' Offices in connection with the prosecution of public accommodations cases under Title II of the Civil Rights Act of 1964.

Since November 1983, the Section has received over 700 complaints, conducted nearly 500 investigations (see Appendix V-A, Distribution by State of Housing, Equal Credit and Public Accommodations Investigations, November 1, 1983 through January 31, 1987), and filed 73 lawsuits (see Appendix V-B, Distribution by State of 73 Housing, Equal Credit and Public Accommodations Lawsuits, November 1, 1983 through January 31, 1987). This volume of matters and cases is an unfortunate commentary on the reality that many Americans still do not enjoy equal access to housing, credit and public accommodations. In response, the Civil Rights Division through this new Section has undertaken to establish an enforcement presence throughout the nation to deter and to remedy such unacceptable behavior.

Fair Housing

Although nearly 20 years have passed since enactment of the Fair Housing Act, a broad range of problems in all geographic areas of the United States still persists. Many owners or managers of apartment buildings, both large and small, refuse to rent to blacks or other minorities. Occasionally, blacks, who are most often the victims of discriminatory housing practices, are frankly told that they are not welcome. Such open discrimination occurs infrequently, however. More often, blacks who inquire are told simply that no apartments are available. In other situations, apartments are rented to some blacks and other minorities, but efforts are made to limit or even to reduce the total number of units they can occupy. While these tactics are claimed by some as necessary to promote or maintain integration, the cold truth is that such "integration maintenance" techniques serve only to impose yet another discrimination barrier to the fair housing ideal for blacks and other minorities.

They are no less offensive than the other strategies employed to defeat the Fair Housing Act, such as "steering" practices of real estate companies, pursuant to which white homeseekers are routed to all-white neighborhoods and black homeseekers are routed to black or integrated neighborhoods; or the marketing and sale of time-share resort properties in a racially discriminatory manner; or the publication in newspapers of discriminatory advertisements for housing; or the prohibiting by municipal ordinance of "testing" by fair housing groups in order to identify continuing instances (usually of a more subtle nature) of housing discrimination.

Litigation Under The Fair Housing Act

Fair Housing Act suits brought by the Division to redress discrimination in the rental of apartments or mobile homes have altogether involved defendants operating more than 24,000 rental units. Our suits against time-share developers, affecting resort properties located in Alabama, Florida, Georgia, Nevada, Texas, South Carolina, and California, have involved over 30,000 time-share units. As a result of our litigation efforts, these units are now open to all on a nondiscriminatory basis.

One Division goal in enforcing the Fair Housing Act has been to create an enforcement presence in all areas of the country. The 53 housing cases brought by the Division since late 1983 include suits in 25 states. At the same time, we have not hesitated, where necessary, to focus our attention in a particular metropolitan area. For example, in late 1983 and early 1984, we filed eight suits alleging racial steering against real estate companies in the Chicago area. This initiative not only succeeded in reforming the practices of the particular defendants involved, but also sent a strong message to other realtors in and around

Chicago that such unlawful real estate practices will not be tolerated.

On another front, the Division has pursued some cases against providers of rental housing located in very small communities based on particularly egregious instances of racial discrimination. Typically, in such communities, there are no large housing providers; minority applicants have limited opportunities to obtain housing elsewhere and rarely have the resources to take private action to enforce their fair housing rights. Thus, when we come upon discrimination that is egregious and no other enforcement steps are being taken, we will respond even though the unlawful actor may be a small operator. No housing provider, whatever the size, can be allowed to regard himself to be above the law; nor will we allow the national policy of equal housing opportunity to become an empty promise for minorities living in small communities.

Our overall enforcement record underscores that commitment. Forty-three consent decrees have been entered in housing discrimination cases brought by the Division since January 1984. Such consent decrees, which resolve lawsuits without the expense and delay of a trial, are tailored to the facts of each case. Usually, however, they provide for (1) an injunction against future discrimination; (2) an educational program designed to ensure that the defendant and its employees are fully aware of their obligations under the law and the consent order; (3) notice to the public that the defendant follows a policy of nondiscrimination; (4) recordkeeping and periodic reporting to permit us to monitor the defendant's activities; (5) relief for individual victims;[1] and (6) affirmative outreach and advertising requirements, in appropriate cases.

The 53 fair housing cases filed since late 1983 have involved a variety of issues and defendants (see Appendix V-C, Fair Housing Suits by Type of Defendant, November 1, 1983 through January 31, 1987). For example, the owners or managers of apartment buildings, including four public housing authorities, were defendants in twenty of the cases. Three similar suits were filed against the owners or operators of mobile home parks. We also sued an apartment referral service for acceding to the discriminatory policies of apartment owners to which they made tenant referrals.

In three of our suits against public housing authorities, we alleged that the authorities unlawfully discriminated against minority applicants on waiting lists by renting to later-applying white applicants in order to maintain a particular level of integration. Similar "integration maintenance" practices are at issue in one of our suits against a large private, but publicly subsidized, apartment complex. In that case, the defendants set a racial occupancy quota limiting the number of blacks and other minorities before the first tenant ever applied, and a quota has been maintained ever since. We intervened in another private suit where a settlement required the owners and operators of several large apartment complexes to rent to a specific quota of black applicants. This requirement was inconsistent with a prior consent decree which we had negotiated with the same defendants.

Real estate companies, agents or brokers were the defendants in 13 of our cases under the Fair Housing Act. All but one of those cases involved allegations of racial steering; the remaining case and a case against a mobile home sales company alleged refusals to sell on account of race.

Developers and marketers of time-share resort properties have been the defendants in eight of our suits. In two of these cases, where the developers themselves financed the sales, we also alleged violations of the Equal Credit Opportunity Act.

Another group of suits did not involve the actual denial of housing but challenged instead practices which inhibit the full exercise of fair housing rights. Thus, for example, we filed four suits and an *amicus* brief in a fifth challenging the practice of recording racially restrictive covenants in official deed books, and the practice of neighborhood associations of requiring such discriminatory covenants. We entered into voluntary agreements with three other recorders of deeds which were willing to take the actions we deemed necessary to cure the violations. We have also sued a large Southern newspaper which regularly published discriminatory housing advertisements. Finally, we have sued a municipality to enjoin enforcement of its ordinance which allows fair housing testers to be prosecuted and requires them to register before conducting any test, a requirement which totally eliminates the effectiveness of any testing. We contacted 15 other cities which had similar ordinances. In response to our letters, these cities repealed their anti-testing ordinances. We filed suit against the one city that was unwilling to take such voluntary action. Since November 1983, we have also filed two successful motions for contempt to enforce compliance with court orders resolving our cases.

Two other major litigation activities pursued by the Division have been suits against municipalities — Cicero, Illinois, and Yonkers, New York — combining for the first time housing discrimination claims with claims of discrimination in employment or educational opportunities. We filed suit against the town of Cicero, Illinois on January 21, 1983, alleging both housing and employment

[1]Although the courts have ruled that we cannot recover monetary damages for the victims of unlawful discrimination, we are entitled to "equitable relief" on their behalf, which can include monetary relief in the form of restitution or other equitable relief. Thus, for example, where we can identify the individuals who were denied housing because of a defendant's discriminatory conduct, we require that such persons be offered the next available units or be given some other priority consideration in order of application date.

discrimination by this virtually all-white Chicago suburb. After extensive discovery and a favorable ruling from the court of appeals on a preliminary injunction involving the employment claims, the parties agreed to a consent decree which was entered in 1986.

The suit against the city and school board of Yonkers, New York, although filed in the last weeks of the prior administration, was litigated by the new Section. This was the first case to combine education and housing discrimination claims. After over 100 days of trial, the district court in November 1985 issued a liability opinion sustaining our claims. Remedial orders were issued in the spring of 1986. The case is now pending on appeal.

Housing Coordination and Cooperation

We have made special efforts to coordinate with other governmental and private fair housing groups throughout the country in order to maximize the overall enforcement efforts of all interested groups. We have signed four formal agreements with state and local enforcement agencies, providing for referral of matters to us where it appears that we may be better able to handle a case because of the nature of the case and the investigation and litigation resources available to the Division. Three suits have resulted from such state and local referrals; three other suits resulted from Department of Housing and Urban Development (HUD) referrals of Fair Housing Act complaints; and two suits against housing authorities have resulted from HUD Title VI referrals.

Legislative Initiatives

In the 98th and 99th Congresses, the Administration proposed amendments to the Fair Housing Act which would expand and strengthen our enforcement powers in two principal ways. First, the proposed legislation would allow us to seek civil penalties of up to $50,000 for an initial violation and $100,000 for a subsequent violation. The threat of such stiff penalties, we believe, would be a significant deterrent to would-be discriminators. Second, while we would retain our current pattern and practice authorization for bringing suit, the proposed amendments would also allow us to bring suits to remedy individual instances of discrimination upon referral from HUD, where HUD has first tried but failed to conciliate the matter.[2] The proposed legislation would also add handicapped persons to those protected against housing discrimination.

[2]We have opposed alternative approaches to amend the Act to provide for HUD complaints to be referred to administrative law judges for a hearing. This procedure would be costly and cumbersome and most likely not measurably more effective or efficient.

Consumer Credit

The Division's enforcement of the Equal Credit Opportunity Act (ECOA) also deserves mention. Since November 1983, nine suits have been filed alleging violations of the Equal Credit Opportunity Act (as noted above, four of those suits alleged violations of the Fair Housing Act as well). Four of these suits have involved discrimination against American Indians where creditors refused to grant credit in circumstances where the applicants resided on Indian reservations and the collateral for the loans was to be located there. Two other suits were filed against the operators of time-share resorts, and the remaining three suits involved thrift institutions which discriminated in making short-term loans on various bases: sex, marital status, race, public assistance, or part-time income.

Public Accommodations

As mentioned, this Section of the Division has the additional responsibility of coordinating with the United States Attorneys' Offices in the enforcement of Title II of the 1964 Civil Rights Act, which prohibits discrimination in places of public accommodations, such as hotels, restaurants and places of entertainment.

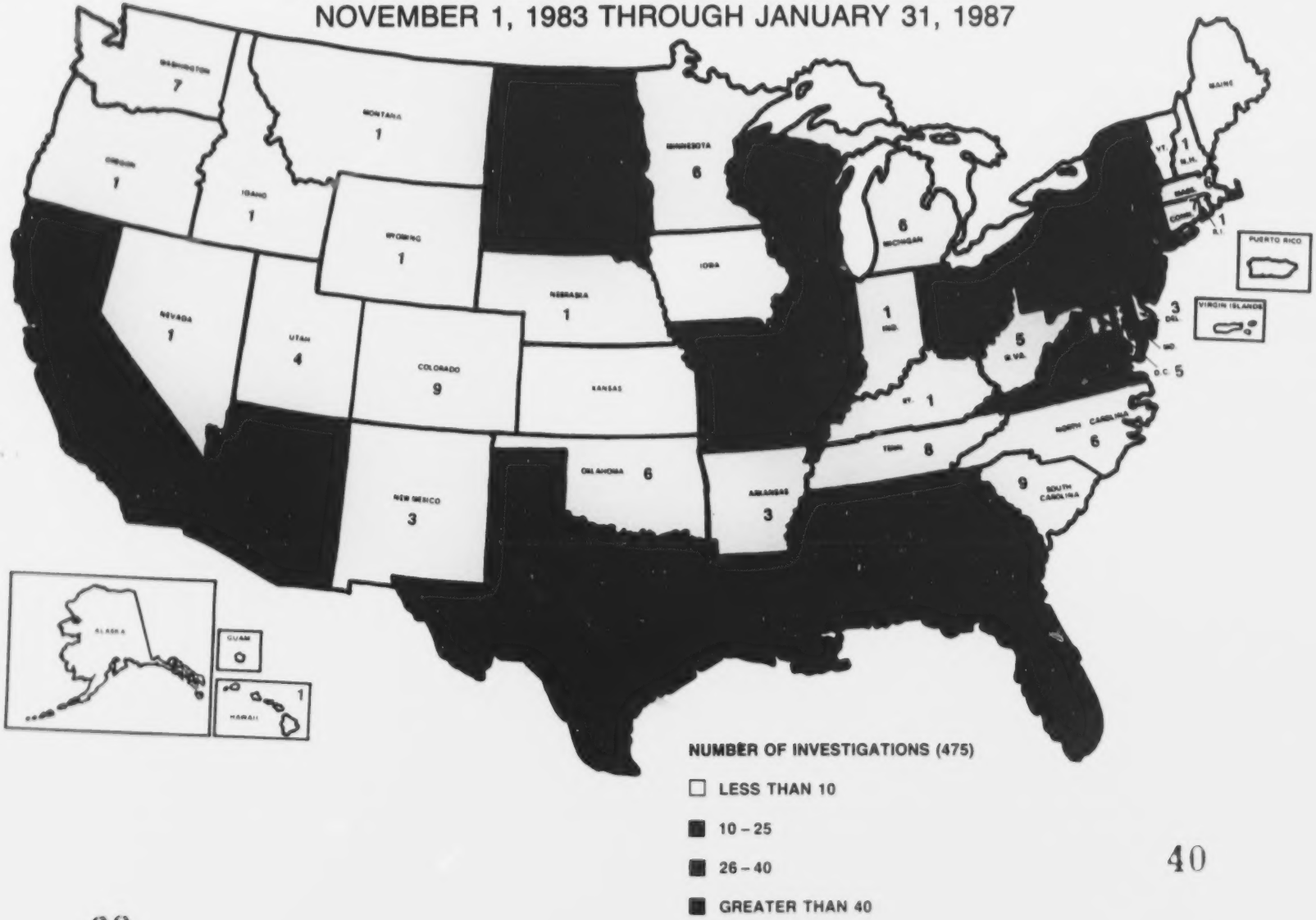
In the late 1970s, the Division chose to pursue discrimination in public accommodations as a low priority matter. In 1979, the principal authority for enforcing Title II was transferred from the Civil Rights Division to the Offices of the United States Attorneys, with the Division maintaining general coordination and review responsibilities. An unfortunate consequence of that decision was a significant drop in the number of Title II actions. Since 1983, however, with the establishment of the new Section, we have revitalized the Title II enforcement program, generating a noticeable surge in the number of Title II prosecutions over the past three years. While only three Title II suits were filed from 1981 through 1983, 16 suits have been filed under Title II since November 1983. Seven of the Title II suits were handled by United States Attorneys' Offices, and the remaining nine were handled directly by the Division. Twelve of the suits involved nightclubs/restaurants which attempted to limit the number of black patrons by imposing discriminatory cover charges, membership fees, or dress codes. Two cases involved swimming clubs which purported to be private clubs, but in reality admitted members of the general public who were white, but not those who were black. Another case brought under Title II and the Fair Housing Act involved a recreational park which also rented trailer spaces.

Conclusion

Despite 20 years of legislative, judicial and executive pronouncements to the contrary, unlawful discrimination in housing, credit and public accommodations continues to be an unfortunate fact of life in America today. The Division has responded to this problem in a vigorous, forceful manner by revitalizing the commitment to non-discrimination in these areas through the creation of the Housing and Civil Enforcement Section in November 1983, which has sought to end such discriminatory practices throughout the country, wherever they have been found to exist. In the short time since its establishment, the new Section has achieved an impressive record covering a broad spectrum of housing, consumer credit and public accommodations enforcement activities. Yet, much remains to be accomplished. To that end, the Division is committed to continuing these enforcement efforts not only to reach the particular offenders targeted in our lawsuits but also to send a strong message that will deter others from engaging in such discriminatory activities.

CIVIL RIGHTS DIVISION

DISTRIBUTION BY STATE OF HOUSING, EQUAL CREDIT AND PUBLIC ACCOMMODATIONS INVESTIGATIONS NOVEMBER 1, 1983 THROUGH JANUARY 31, 1987



(V-A)

(V-B)

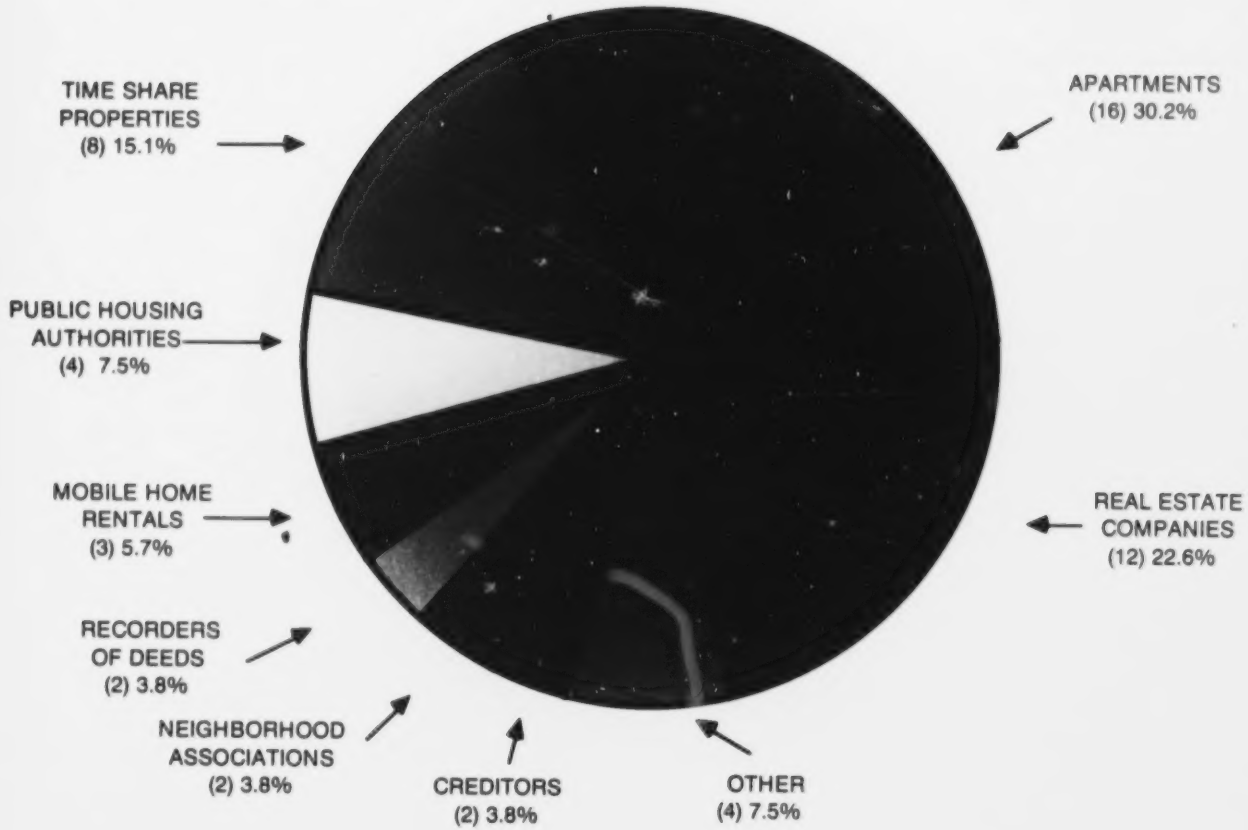
CIVIL RIGHTS DIVISION

DISTRIBUTION BY STATE OF 73 HOUSING, EQUAL CREDIT AND PUBLIC ACCOMMODATIONS LAWSUITS NOVEMBER 1, 1983 TO JANUARY 31, 1987

CIVIL RIGHTS DIVISION

FAIR HOUSING SUITS BY TYPE OF DEFENDANT

NOVEMBER 1, 1983 THROUGH JANUARY 31, 1987


TIME SHARE PROPERTIES (8) 15.1%
APARTMENTS (16) 30.2%
PUBLIC HOUSING AUTHORITIES (4) 7.5%
MOBILE HOME RENTALS (3) 5.7%
REAL ESTATE COMPANIES (12) 22.6%
RECORDERS OF DEEDS (2) 3.8%
NEIGHBORHOOD ASSOCIATIONS (2) 3.8%
CREDITORS (2) 3.8%
OTHER (4) 7.5%

Rights of Institutionalized Persons

In response to repeated public disclosures of life-threatening, cruel and grossly dehumanizing conditions in our nation's public institutions, Congress enacted the Civil Rights of Institutionalized Persons Act (CRIPA) in 1980. This statute gives authority to the Attorney General to take action to vindicate the constitutional and federal rights of persons confined to state and local mental health facilities, public nursing homes, prisons, jails and the like.

Since enactment of the statute, the Division has reviewed complaints from over 400 facilities and initiated 86 CRIPA investigations in 32 states and two territories, involving 95 institutions housing some 100,000 persons. Investigated facilities can be found throughout the United States and its territories — from Guam to Massachusetts, and from Oregon to the Virgin Islands (see Appendix VI-A, Facilities Investigated Subject to CRIPA by State and Territory, May 1980 through January 31, 1987). Both large and small facilities have received our attention — from the 7,500-inmate State Prison of Southern Michigan, the world's largest walled prison, to the 150-person jail in Boise, Idaho, the site of the torture death of a juvenile in 1982.

The Attorney General's authority extends to both penal and nonpenal facilities. In institutions where persons are placed pursuant to the criminal process — prisons and jails — the Division's enforcement activities seek to eliminate conditions which expose inmates to cruel and unusual punishment. The focus here is on eliminating rampant violence, severe sanitation problems, serious fire hazards, deliberate indifference to serious medical needs, and unconstitutional overcrowding. In facilities where persons are placed for care and treatment — mental health and mental retardation facilities and nursing homes — our efforts are aimed at obtaining safe conditions, adequate medical care, and insuring sufficient care, treatment and training to avoid undue risks to personal safety and freedom from unreasonable bodily restraint. In sum, the Division seeks those remedies necessary to insure that responsible state and local officials provide the residents of state institutions and inmates in prisons and jails the full measure of their constitutional rights.

Activities and Accomplishments

Pursuant to CRIPA, the Division investigates complaints of widespread and serious abuses, advises responsible state and local officials of any unlawful or unconstitutional conditions found, and seeks to the extent practicable to resolve deficiencies voluntarily without resort to protracted litigation. Absent agreement, a lawsuit is promptly filed in federal court. In each investigation, issues germane to the guarantee of basic constitutional rights have been carefully and thoroughly examined through on-site inspections, review of documents, and interviews of staff and other knowledgeable persons. Lawyers, paralegals and consultants have made some 723 trips outside Washington to facilities under investigation since the enactment of the statute. In FY 1986 alone, 21 new investigations were initiated. In the same fiscal year, 83 consultants toured 36 facilities. The Department spends, on the average, approximately $100,000 annually to retain psychiatrists, psychologists, medical doctors and the like to conduct on-site evaluations of subject facilities. Tens of thousands of documents were reviewed and over 4,000 persons were interviewed last year as part of this effort.

Of the 86 investigations initiated since passage of CRIPA in 1980, 48 have been concluded by consent decree, voluntary remedial action sufficient to satisfy our constitutional concerns, or, in a few cases, a finding of no violation. Five suits are pending against states for their continuing failure to insure constitutional conditions, and 33 investigations are still underway, at one stage or another (see Appendix VI-B, Status of 86 CRIPA Investigations).

Overall, institutional operating budgets of facilities subject to current enforcement activities have increased by almost $100 million, or nearly 33%.[1] Over $123 million have been spent on capital improvements in 16 facilities. In 12 facilities, 1,715 new staff have been added in all categories. Over 1,900 residents of eight mental health and mental retardation institutions have been placed in alternative programs and facilities as a result of state efforts to reduce the institutional census and to place residents in more appropriate community settings. Drug and restraint policies have been drastically modified. Abuse and violence have been substantially reduced.

[1]Unless otherwise specified, statistical information is based upon matters settled by outstanding consent decrees entered since 1984 and matters otherwise concluded since 1985. The monetary figures specified in this paragraph are derived from information obtained from 16 facilities.

Mental Health and Mental Retardation Facilities

As late as the early 1980s, Southbury Training School, Southbury, Connecticut, was a "training" school in name only. It was not uncommon for large numbers of residents to be left unsupervised; injuries and accidents were commonplace; bodily restraints were routinely used and medical care was often wanting. Since the commencement of the Division's investigation of this mental retardation facility (which is now under a consent decree), the operating budget of Southbury has increased by $11 million, permitting at last responsible officials to take steps to remedy life-threatening deficiencies. An additional $4.5 million increase is projected for the next fiscal year. Some $15 million will be spent next year on capital improvements, including major building renovations to eliminate fire hazards. No longer will nonambulatory residents be threatened with loss of life in case of fire.

Southbury is also committed to improving care, to training residents and to eliminating injurious behaviors in residents who harm themselves and others. Southbury's staffing complement has been increased by 593 persons, including doctors, nurses and psychologists. In the near future, an additional 224 persons will supplement the staff. Of the 1,100 residents, only 176 (or about 16%) are presently being administered behavior-modifying medications. While further improvement is desirable, Southbury's staff is now sufficient to afford proper supervision of residents; professionals have begun to implement training programs; use of drugs has been reduced; buildings will be made safer; medical care is improved — all to the constitutional benefit of the mentally retarded residents of Southbury.

Rosewood Center, Owings Mills, Maryland, notorious in professional circles for its inhumane conditions and warehousing of the mentally retarded, is the subject of a 1984 comprehensive consent decree. It was far too common at the outset of our investigation to find residents naked, lying on the floor in a fetal position. All residents are now properly clothed and Rosewood has taken one giant step closer to the 20th century. Its budget has expanded from $26 million in 1981 to a present figure of $39 million, a 50% increase. During the same period, $13 million have been expended on capital improvements, including building renovations to insure fire safety and some degree of privacy for residents. Most dramatically, Rosewood has reduced its population by 600 residents — residents placed voluntarily by state officials in alternative programs and facilities more appropriate for their care and training.

Many mental health and mental retardation facilities, when faced with chronic staff shortages, have overused physical restraints and misused powerful tranquilizing medications. Residents in a number of facilities have been tied to chairs, placed in straight jackets, or administered heavy doses of drugs to put them into a dull, lethargic stupor. Increases in professional and other staff have gone a long way toward eliminating these dangerous and dehumanizing practices. In Southbury, the average number of hours that all residents spend in physical restraints per month has been reduced from 523 to 47. At Enid State School, in Oklahoma, the number of residents being administered tranquilizing medication has been reduced from 244 to 93, and the dosage is now carefully controlled. In Pauls Valley State School, also in Oklahoma, officials eliminated the use of physical restraints entirely, unlocked all living areas, and substantially reduced the use of tranquilizing medications. And, at Michigan's Ypsilanti State Hospital, the subject of a comprehensive consent decree, the use of seclusion and restraints has already been reduced by 54%, and a further reduction of these practices is anticipated.

Other mental health and mental retardation facilities have likewise benefitted from increased operating budgets and the addition of professional and direct care staff. The South Carolina State Hospital operating budget has been significantly increased by $6 million, with an additional increase of $2 million projected for next fiscal year. Since 1983, $1.8 million have been expended on capital improvements. The average sum expended per patient at the hospital has increased from $26,000 to $55,000 per year. For the first time, no private damage actions filed by patients are pending against South Carolina State Hospital.

The budget of Pauls Valley State School has increased from $13 million to nearly $16.5 million per year, a 26% increase, all of which has been devoted to improving patient care. Staffing has also been increased at Pauls Valley. One hundred twelve professional staff and 69 direct care staff have been employed, while the number of residents has been reduced by 139. Dramatic staffing increases have also occurred at the Logansport State Hospital, Logansport, Indiana, and Central State Hospital at Indianapolis, both subject to a consent decree. One hundred one new staff have been hired since the decree was entered in 1984. Significantly, these staff increases include a number of vitally needed psychiatrists. Moreover, Indiana state officials have agreed to employ the consent decree staffing ratios at all other Indiana mental health facilities, resulting in increased staffing — and improved patient care — at these facilities as well.

Nursing Homes

Hardly a day goes by without news of a tragic incident in one of numerous nursing homes across the United States. Bedridden patients are neglected, physical abuse

occurs, and medical attention is inadequate. All too often our elderly are simply forgotten. In a large number of incidents, these facilities are privately owned and therefore not subject to the enforcement authority of the federal government. Elderly persons residing in nursing homes administered by state and county officials, however, do fall within CRIPA's statutory mandate.

Following the commencement of an investigation by the Division at the Edgemoor Geriatric Hospital, Santee, California, dramatic staffing increases have been implemented. The patients at this nursing home have benefitted from the addition of 125 professional staff, including 32 registered nurses and 63 nursing assistants. These employees represent a 40% increase from the previous staff complement and a new county cost of $3.1 million. As a result of improvements in care, a significant number of formerly bedridden patients are now walking — most of whom had not walked during this decade. Finally, the facility is now accredited by the Joint Commission for the Accreditation of Hospitals, another reflection of improved patient services.

Prisons and Jails

Rocked by prison riots in the early 1980s, the Michigan prison system was plagued with constitutional violations. Since the entry of a consent decree in 1984, the state has already made substantial progress in correcting these serious abuses. Significantly, Michigan has already spent over $50 million to eliminate constitutional violations in its three largest prisons. Pursuant to a comprehensive remedial plan, state officials have built a 94-bed hospital to meet the serious medical needs of the prison population. Also improved are services for the seriously mentally ill. Disturbed inmates are no longer strapped to bare metal bed frames or left naked in their cells. In response to enforcement efforts, sanitation has likewise been improved; cellblocks are no longer littered with trash and human feces.

Capital expenditures to eliminate unconstitutional violations in other penal facilities have been substantial. The Bedford County, Tennessee, Board of Supervisors has voted to spend $1.35 million to construct a new jail. The present jail, built in 1867, was determined to be a fire trap. When our investigation commenced in 1984, inmates were locked in their cells, and left unattended. Any fire would have resulted in extensive loss of life. With a new facility planned and adequate interim remedies in place, jail inmates need no longer fear for their lives.

In Talladega County, Alabama, where the jail has been the subject of a consent decree, the operating budget was increased from $290,000 to $396,000 in order to implement necessary improvements. The Newark, New Jersey, detention facility has benefitted by consent decree requirements of $200,000 worth of improvements. Finally, in Hinds County, Mississippi, local officials now spend $250 per day per person to house mentally ill prisoners awaiting transfer to the state mental hospital rather than maintaining them in the county jail, which was ill-equipped to handle their mental conditions.

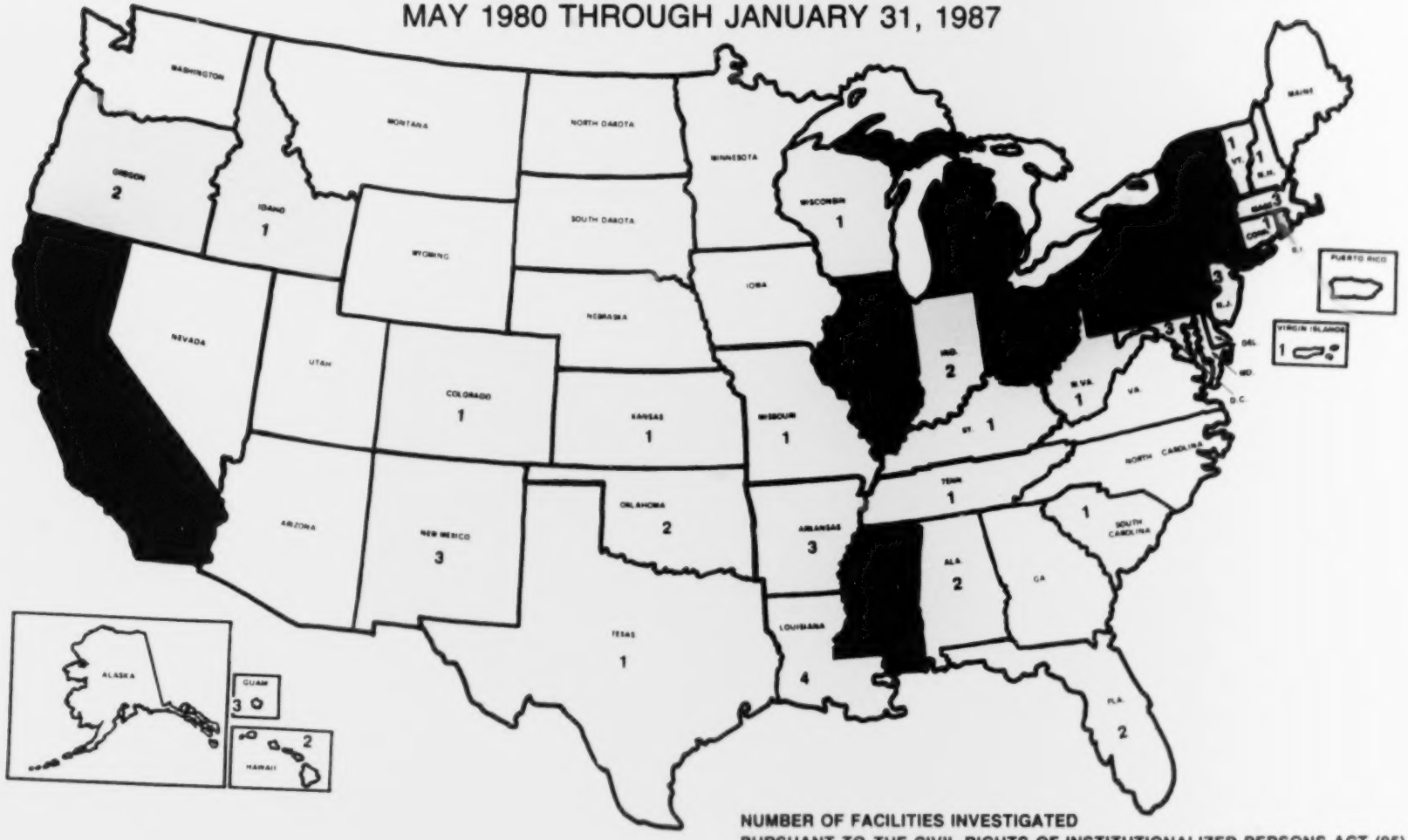
Conclusion

Constitutional conditions in public institutions have been or are being achieved by the Division's enforcement activities pursuant to CRIPA. Those matters resolved since 1984 have produced additional new expenditures of at least $105 million in furtherance of the achievement of constitutional conditions of confinement in penal facilities. The inmates of Michigan's prisons and other detention facilities and jails we have investigated are no longer subject to unreasonable risks to their lives. Overall operating budgets of mental health and mental retardation facilities we have investigated have increased by 28 percent. The residents of Southbury, Rosewood, Pauls Valley, Edgemoor and other facilities now have a chance to live better lives. In addition, increased attention is being given to alternatives to institutionalization, and many facilities under CRIPA consent decrees are looking at alternative community living options as a means of improving staff-to-resident ratios in the larger facilities.

While much remains to be done, we can take considerable satisfaction in our efforts to date — and those of the state and local governments — which have resulted in dramatic improvements in the living conditions and health care services for so many institutionalized persons.

CIVIL RIGHTS DIVISION

FACILITIES INVESTIGATED SUBJECT TO CRIPA
BY STATE AND TERRITORY
MAY 1980 THROUGH JANUARY 31, 1987



NUMBER OF FACILITIES INVESTIGATED
PURSUANT TO THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT (95)

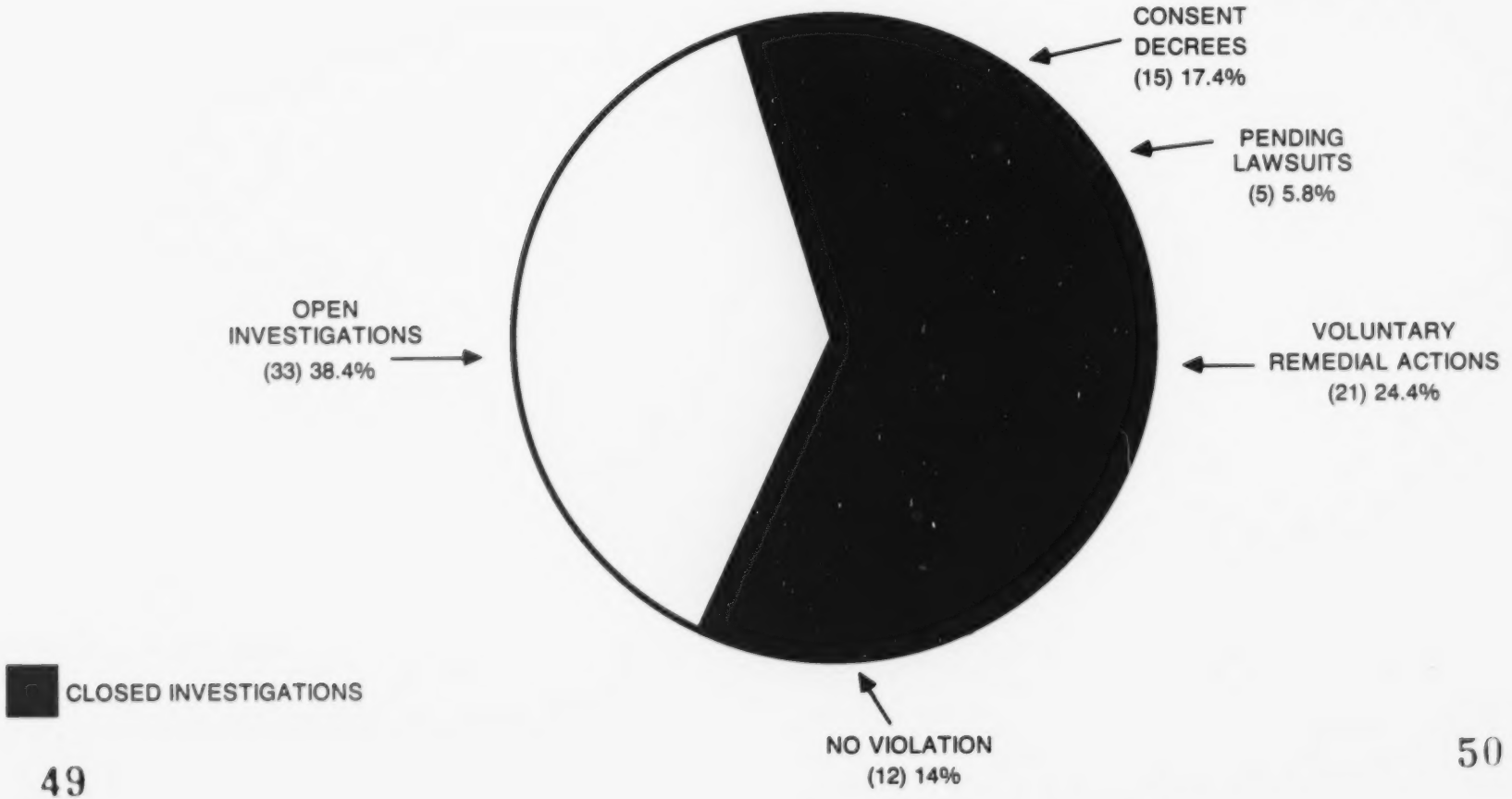
- ☐ 1 – 4
- ■ 5 – 10
- ■ GREATER THAN 10

(VI–A)

CIVIL RIGHTS DIVISION

STATUS OF 86 INVESTIGATIONS CONDUCTED UNDER THE CIVIL RIGHTS OF INSTITUTIONALIZED PERSONS ACT MAY 1980 THROUGH JANUARY 31, 1987

(VI-B)



Voting Rights

Credited as the most effective civil rights legislation ever enacted by Congress, the Voting Rights Act of 1965 was aimed at overcoming the deficiencies of previous attempts to enforce the guarantees of the Fifteenth Amendment. In addition to the nationwide prohibition against discrimination in the electoral process contained in Section 2, the Act also establishes a "preclearance" requirement in Section 5. This preclearance procedure was designed to ensure that "covered jurisdictions"[1] would not be able to change any "standard, practice or procedure affecting voting" without subjecting the proposed change to federal scrutiny either by the United States District Court for the District of Columbia or the Attorney General.[2] Additionally, to ensure that all qualified persons are permitted to vote and to have those votes counted without regard to race once they are on the voter rolls, Section 8 of the Act authorizes the assignment of federal observers to monitor the election day activities within polling places in designated counties satisfying certain criteria.

The Civil Rights Division was delegated the responsibility for the enforcement of the Voting Rights Act as well as other federal statutes which pertain to nondiscrimination in the exercise of voting rights, including the Overseas Citizens Voting Rights Act and the voting rights provisions of the Civil Rights Acts of 1957, 1960 and 1964.

In discharging its enforcement responsibilities under the Voting Rights Act, the Division performs three basic functions: (1) litigation activities, including litigation brought by the United States against jurisdictions for violations of any of the above federal laws, along with the defense of declaratory judgment actions brought by jurisdictions either to obtain judicial preclearance of a proposed change affecting voting or to "bail out" from coverage under the Act's special provisions; (2) analysis and review, pursuant to Section 5, of voting changes submitted to the Attorney General for administrative preclearance; and (3) assignment of federal examiners and observers of elections.

Discrimination in the Electoral Process

The early and logical focus of enforcement was on the registration process. The day following the signing of the Act, federal examiners were dispatched to numerous counties in the covered states to list potential voters. As a result of these activities during the first seventeen months of the Act (August 1965 to December 1967), black voter registration in the covered states increased by over 700,000 persons.

Following the increase in black voter registration that flowed from the initial enforcement efforts, jurisdictions began to employ discriminatory techniques more sophisticated than the outright denial to black persons of the right to register to vote.[3] Accordingly, the emphasis in enforcement shifted from registration practices to other areas. Foremost were challenges to the electoral structure. Beginning in the early 1970s, multi-member districts, at-large election systems or specified features of the electoral structure such as numbered posts, full-slate requirements or majority vote provisions, were challenged as being dilutive of the minority community's voting strength. These actions, in conjunction with challenges to redistricting plans alleged to be racially discriminatory, sought to create a meaningful opportunity to vote for those persons who had been newly enfranchised by virtue of other provisions of the Act. These efforts have continued to the present day and the impact of the Voting Rights Act is perhaps more evident in 1987 than at any time since its passage.

[1] "Covered jurisdictions" are designated under Section 4 of the Act. Currently, nine states in their entirety and portions of seven others are considered "covered jurisdictions" under the special provisions of the Act. Jurisdictions may initiate a lawsuit to "bailout" or terminate coverage under the special provisions. The United States participated in seven such lawsuits between 1982 and 1984.

[2] Sections 6 and 7 of the Act also establish, for counties so designated by the Attorney General, a procedure allowing persons to have their qualifications for registering to vote under state law reviewed by a federal examiner. If qualified, the applicant's name is placed on a list of eligible voters which is forwarded to the appropriate state or local official who must place those names on the official voter rolls.

[3] Although the need for federal examiners has largely dissipated, the potential for discrimination in the registration process remains, and even since 1981 we have employed this law enforcement mechanism for the protection of minority voting rights. For example, examiners were sent to six locations in Mississippi in 1983 where, in a three-day period, over 1,100 persons were listed. In addition, over half of the 21 objections interposed since 1965 by the Attorney General pursuant to Section 5 of the Act to proposed changes in procedures for either voter registration, reregistration or purging of voters have been interposed after 1981 and, in one Alabama county, the United States had to bring suit in 1982 to prevent a discriminatory reregistration.

Enforcement of the Voting Rights Act

One of the Division's most active efforts continues to be our enforcement of the Voting Rights Act. Since January 1981, the Division has participated in a total of 96 cases (44 as plaintiff, 16 as plaintiff-intervenor, 12 as *amicus curiae*, and 24 as defendant) (see Appendix VII-A, Voting Rights Litigation by Period and by State). Contemporaneous with this litigation effort has been an unparalleled level of review under Section 5. From January 1981 through September 30, 1986, the Division reviewed over 82,000 changes (see Appendix VII-B, Section 5 Voting Changes Submitted through September 30, 1986; and Appendix VII-C, Changes Submitted (82,298) by State, January 1, 1981 through September 30, 1986). Objections have been interposed to 593 changes during this same time period (see Appendix VII-D, Voting Changes to Which Objections Have Been Interposed by Type, January 1, 1981 through September 30, 1986; and Appendix VII-E, Voting Changes to Which Objections Have Been Interposed by State, January 1, 1981 through September 30, 1986). In addition, the Division recently promulgated revisions to the administrative procedures for Section 5 which incorporate recent judicial decisions involving the Voting Rights Act and the 1982 extension of Section 5. Finally, since January 1981, we have deployed 4,406 federal observers to attend elections to document any instances of discrimination in the voting process.

At all levels of government, from city council to United States Congress, effective enforcement of the Voting Rights Act has provided an opportunity for members of protected minority groups to participate on a basis equal to other members of the electorate in the electoral process and to have an equal opportunity to elect candidates of their choice to office.

Municipal Elections

Foremost among the litigation brought to remedy Section 2 violations at the municipal level was the Division's participation in the successful challenge to the at-large system in Mobile, Alabama. Further, a keynote feature of recent activity under the Voting Rights Act has been its expansion outside the South. We successfully sued the city of Cambridge, Maryland, a city not covered by the Act's special provisions, and obtained a change from at-large elections to elections by district as well as a special election that should assure fully to blacks an equal opportunity to participate in the electoral process.

Other significant actions affecting municipal elections involved Section 2 challenges to redistricting plans for the city councils in Chicago and Los Angeles, the nation's second and third most populous cities. These actions culminated efforts of the Division to protect the voting rights of affected minorities in the three largest cities in the nation, since earlier, in 1981, meaningful changes in New York City's districting process had been obtained because of objections interposed by the Attorney General under Section 5.

In the litigation challenging the Chicago redistricting, ward district lines were required to be redrawn so as to ensure equal access to the franchise for both black residents of the city and persons of Spanish origin. The successful resolution of the Los Angeles litigation remedied the Section 2 violation we claimed to have resulted from the treatment afforded Hispanic voters under the 1982 redistricting and, through a redrawing of certain district lines, assured equal voting opportunities to persons of Spanish origin living in that city.

In addition to court-ordered changes, the last three years have seen a virtual explosion in the number of jurisdictions, mostly cities and school districts, abandoning the at-large method of electing members of their governing bodies. This, no doubt, is attributable in significant part to the 1982 amendment of Section 2.[4] In the three years prior to the amendment, fewer than 600 jurisdictions in the covered states changed their method of election. In the three years following the amendment, the number increased to 1,354.

Since corporate boundaries determine who may and who may not vote in municipal elections, a municipality's decision regarding annexation of land has a direct effect on the voting rights of individuals both inside and outside the city's boundaries. In this unique but important area, we have challenged both individual annexations as well as a municipality's annexation policy as violative of the Voting Rights Act. The town of Indian Head, Maryland, for almost two decades, had avoided annexing several areas of land on which significant concentrations of black persons resided, although areas containing white residents were readily admitted into the city. After we initiated litigation under Section 2 to remedy the situation, the city agreed to adopt a nondiscriminatory annexation policy which resulted in the two "black population" areas promptly being brought into the city.

The annexation policy of the city of Pleasant Grove, Alabama, came under our scrutiny in a different context. There the city, which is all-white in population, had sought Section 5 preclearance of its decision to annex additional areas of white population. A review of the information available to us indicated that the annexations were in furtherance of a policy which, for fifteen years,

[4]The amendment to Section 2, which codified the "results test" from *White* v. *Regester*, 412 U.S. 755 (1973), prompted many challenges to the revised provision as being an unconstitutional exercise of congressional power. The United States intervened and successfully defended the provision's constitutionality in ten such actions.

had successfully excluded black persons from any participation in the city. Following an objection to the annexations by the Attorney General, we successfully opposed judicial preclearance of the annexations in question from the United States District Court for the District of Columbia; the Supreme Court recently affirmed the district court's denial of preclearance.

In 1983, the city of Prior Lake, Minnesota, sought to prevent Native Americans residing on reservation land within the city limits from voting in municipal elections by deleting the tribal lands from the city's voting precincts. In conjunction with the Shakopee Mdewakanton tribe, the United States successfully challenged that action. The lawsuit also resolved a long-standing dispute regarding the delivery of municipal services to the reservation on a basis different from the rest of the city.

School Boards and Boards of Education

Likewise, our enforcement of the Voting Rights Act has had a similar impact on school boards and boards of education. In a number of jurisdictions, we have sued simultaneously the local governing body and the school board. In Dallas and Marengo Counties, Alabama, our Section 2 lawsuits have involved both the county commission and the county school board.

In a number of our enforcement efforts, we have been able to coordinate the complimentary features of the Act so as to assure full relief in a given situation. One example was the April 1984 election of members of the Board of Trustees of the Wilmer-Hutchins Independent School District in Dallas County, Texas. Although the school district had a majority black population, four of the seven board members, who were elected on an at-large basis, were white. Two positions, then currently occupied by whites, were to be contested at the next election; each white incumbent had a black challenger. Prior to the election, the board, on a racially-divided vote, chose to close one of the two polling places located in black population areas and to establish two new polling places in areas where the population was white. After we succeeded in obtaining a submission of the proposed changes by the school district for the required Section 5 review, an objection to the new polling places was interposed. Since every person that the board of trustees had appointed to serve as an election official was white and because the mere bar to the use of the new polling places did not appear sufficient to restore to black voters the degree of confidence in the electoral process necessary to bring them to the polls in significant numbers, we utilized the provisions of Sections 6 and 8 of the Act, under which the Attorney General certified Dallas County, Texas, for use of a federal examiner so that federal observers could be assigned to the district's polling places to monitor the election. As a result, there was no significant drop-off in the number of members of the minority community who came to the polls to vote.

County Government

As with municipalities and school boards, our enforcement of the Act has had substantial impact on the character of county government. For example, in Mississippi alone Section 5 objections were interposed to 22 county redistrictings which were undertaken following the 1980 Census. Twenty of these counties then developed alternative plans which subsequently obtained preclearance. At the time those plans were developed and submitted to the Attorney General only nine black persons served as members of the boards of supervisors in these 20 counties. In the elections conducted following the adoption of these new plans, the number of black persons serving as supervisors increased to 19.

Black representation on county governing bodies also increased as a result of our litigation efforts. In Marengo County, Alabama, for example, where we have had litigation pending in one phase or another since 1978 challenging the at-large method of electing members of the county commission, we finally succeeded in getting the issues resolved by the court, which found the at-large method to be violative of Section 2 and ordered that elections be conducted by single-member districts. As a result, black persons were elected to serve on the county commission for the first time.

On another front, Sumter County, South Carolina, attempted to obtain judicial Section 5 preclearance of a change in the method of selecting the members of its county council. Previously, the council had been appointed by the state legislature; no black had served as a member of the council. The county sought to implement an at-large method of election which the evidence indicated would continue the exclusion of blacks from the county's political process. After we successfully opposed preclearance by the United States District Court for the District of Columbia, the county adopted a single-member district election system. As a result, black voters have been able to elect three of the seven members of the Sumter County Council.

Nor have our enforcement activities been confined to counties in the covered states. We also challenged the at-large method of election by which Dorchester County, Maryland, elected its county commission. As a result of this successful litigation, residents of Dorchester County recently elected the first black person to serve on a county commission on Maryland's Eastern Shore.

The scope of the Voting Rights Act's Section 2 protections was further defined in a lawsuit we brought against

Conecuh County, Alabama. Alabama election law provides that county officials appoint persons to act as poll officials. Of the 150 persons appointed to serve as an official in each election held in Conecuh County, Alabama, there had never been more than 15 to 20 black persons named. We successfully challenged the county's practice of appointing only a token number of black persons to serve as poll officials as violative of Section 2. As a result of the lawsuit, a significantly larger number of black residents of the county now serve as election officials.

State Government

Enforcement activity under Section 5 against state legislative redistrictings also has been brisk. In six of the seven covered states, the Attorney General has objected to the redistricting of at least one of the two houses of the state legislatures. Following two consecutive objections to Alabama legislative redistrictings, Section 5 preclearance eventually was obtained for a plan which was hailed by all as a major advancement of minority voting rights in Alabama. Elections under that plan resulted in 24 black persons being elected to the legislature where, under the plan previously in effect, that number had been 18. In all, the Attorney General interposed objections to redistrictings for 16 state legislative bodies, and the results for each were equally dramatic. Prior to interposing objections, 120 of the members of those 16 bodies were minorities; in the elections that followed, under redistricting plans that had been precleared following our objections, the number increased to 170.

In a similar context, the State of South Carolina chose to seek judicial preclearance of its state senate redistricting rather than submit it to the Attorney General for administrative review. We opposed the redistricting in court on the ground that it was not free of discriminatory purpose or effect. The matter was resolved prior to trial when the state adopted an alternative plan to which the Attorney General had no objection. The elections that subsequently took place under South Carolina's precleared plan produced an increase in the number of elected black state senators. Once again, we helped to ensure the full enforcement of the Voting Rights Act's protections through the assignment of federal observers to monitor the elections held under the precleared plan.

Federal Elections

Our Voting Rights Act enforcement activities have had a significant impact at the congressional level as well. Initially proposed congressional redistricting plans for Georgia, New York, Mississippi and Texas were never implemented as a result of objections interposed by the Attorney General. With the seating of the 100th Congress, minorities have been elected to seats in subsequently precleared districtings for each congressional district in those four states that was the focus of the Attorney General's objections.

In 1982, the configuration of the Mississippi congressional districts received its first substantive Section 5 review even though that basic configuration was first advanced by the state in 1966. From 1890 to 1962 the state's congressional districts were drawn on a north-south axis thereby creating a district in the heavily black Mississippi Delta area. In 1966, a federal court held that the new configuration, which fragmented the Delta into three districts, was constitutional; the plan was never reviewed under Section 5. When a similar plan, developed following the 1970 Census, was submitted for Section 5 scrutiny, the Attorney General erroneously deferred to the decision of the local district court and did not interpose an objection although the discriminatory effect of the altered configuration was noted. The 1981 redistricting attempted to follow the same configuration. This time, however, we subjected the plan to the appropriate scrutiny under Section 5 and an objection was interposed. The resulting alternative plan created a district which gives black persons a realistic opportunity to participate in the electoral process on a basis equal to other members of the electorate and, for the first time since Reconstruction, a black person has now been elected as a member of the Mississippi congressional delegation.

Overseas Citizens' Voting Rights

The voting rights we have sought to protect have not been limited to those safeguarded by the Voting Rights Act. Another group of voters who traditionally have been disenfranchised are those citizens who, at the time of the election, reside outside of the country. Pursuant to the Overseas Citizens Voting Rights Act (OCVRA), which allows such persons to cast ballots in federal elections in the place where they last resided before leaving this country, states are required to provide absentee ballots early enough for voters to execute and return their ballot in time to be counted. Of the 11 lawsuits brought under the OCVRA since it was enacted in 1975, nine were brought since 1981 and have resulted in a significant number of persons being able to cast an effective ballot where otherwise they could not have done so.

American Indians' Voting Rights

In New Mexico, American Indians have long been victims of voting discrimination. As a result, their participation in the political process has been remarkably low. When the state legislature redistricted in 1982 based on the number of votes cast in 1980, rather than on population,

Indians were severely undercounted. The Division successfully challenged the method of redistricting as an intentional effort to infringe on the voting rights of Indians. The court ordered the state to redistrict based on population statistics, but the new plan devised in response to that order gerrymandered district boundaries and unnecessarily and intentionally split concentrations of Indians. The district court held that the plan diluted Indian voting strength and ordered a second plan, which provided fairly drawn legislative districts. As a result, Indian representation in the New Mexico House has increased from one to four seats.

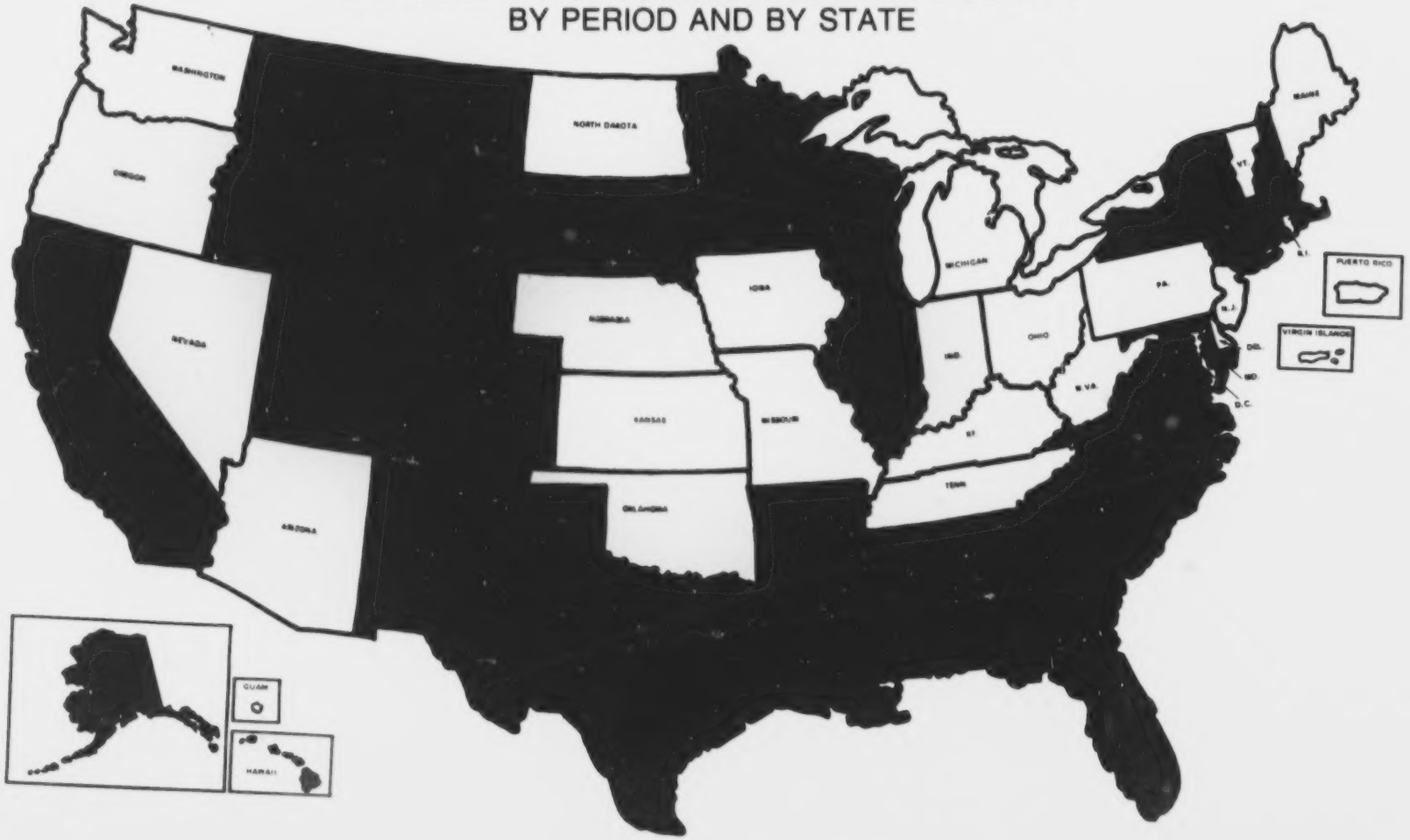
Based on our work in New Mexico, we were able to identify several further violations of Indian voting rights. Two additional suits were filed in 1985 and several more matters remain under active investigation. Our continuing efforts to address Indian voting problems in New Mexico (and elsewhere) have had a very positive impact on Indian political participation. In addition to the several new Indian legislators, the November 1986 elections brought new Indian officials to local governments as well.

Conclusion

Overall, the effectiveness of our enforcement of the Voting Rights Act is reflected in the opening of the electoral process to minorities. Not only has minority voter registration increased but concomitantly there has been a significant increase in the number of minority elected officials during the 1980s. According to the National Roster of Black Elected Officials published by the Joint Center for Political Studies, there were 4,912 black elected officials in 1980; in 1986 the number was 6,424 or a 30% increase. While comparable compilations are not available for the other protected minorities, all indications are that there have been similar successes.

CIVIL RIGHTS DIVISION

VOTING RIGHTS LITIGATION IN WHICH THE
DEPARTMENT OF JUSTICE HAS BEEN INVOLVED
BY PERIOD AND BY STATE

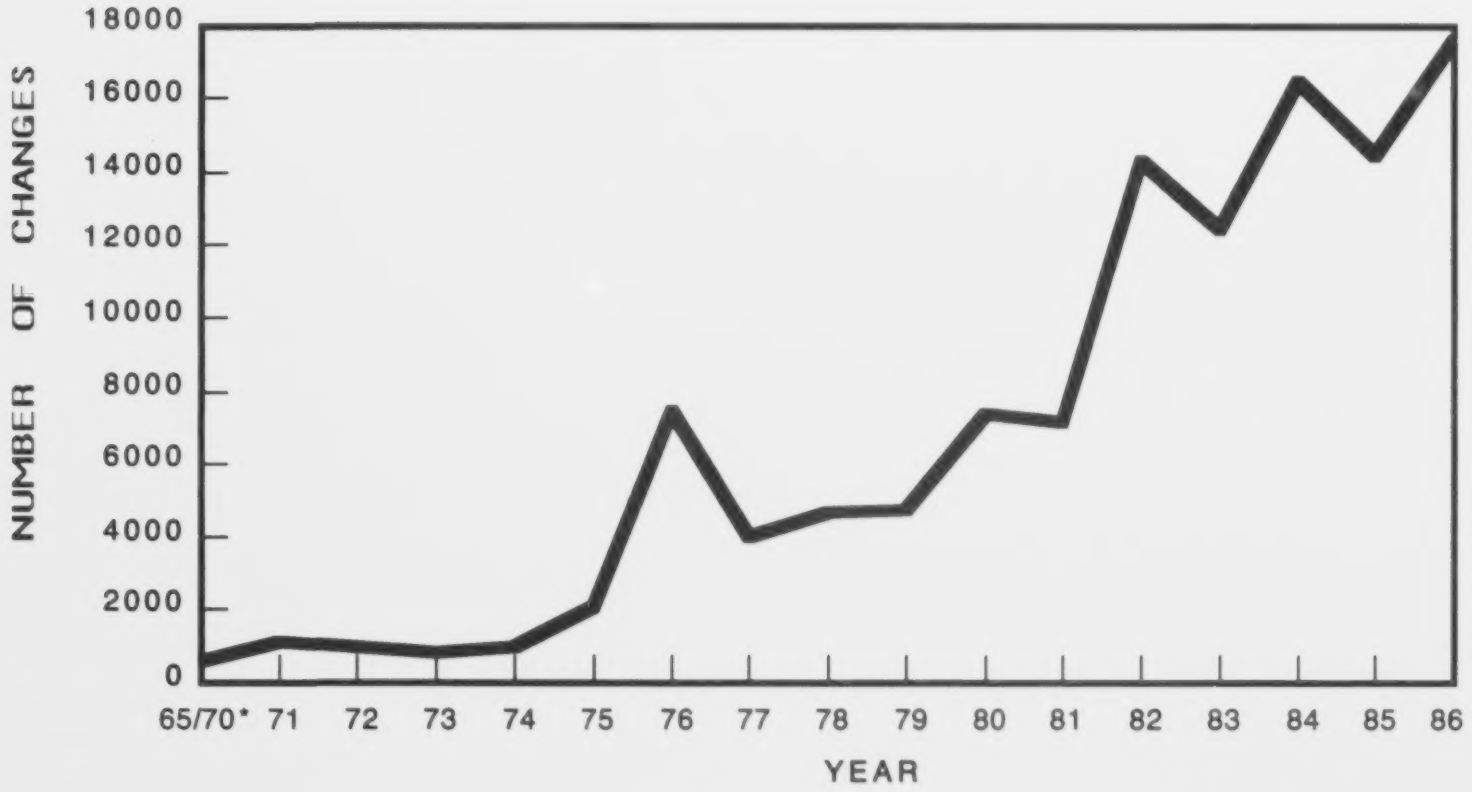


(VII–A)

(VII-B)

CIVIL RIGHTS DIVISION

SECTION 5 VOTING CHANGES SUBMITTED THROUGH SEPTEMBER 30, 1986



*DURING THE SIX-YEAR PERIOD, 1965 – 1970, A TOTAL OF 578 VOTING CHANGES WERE REVIEWED.

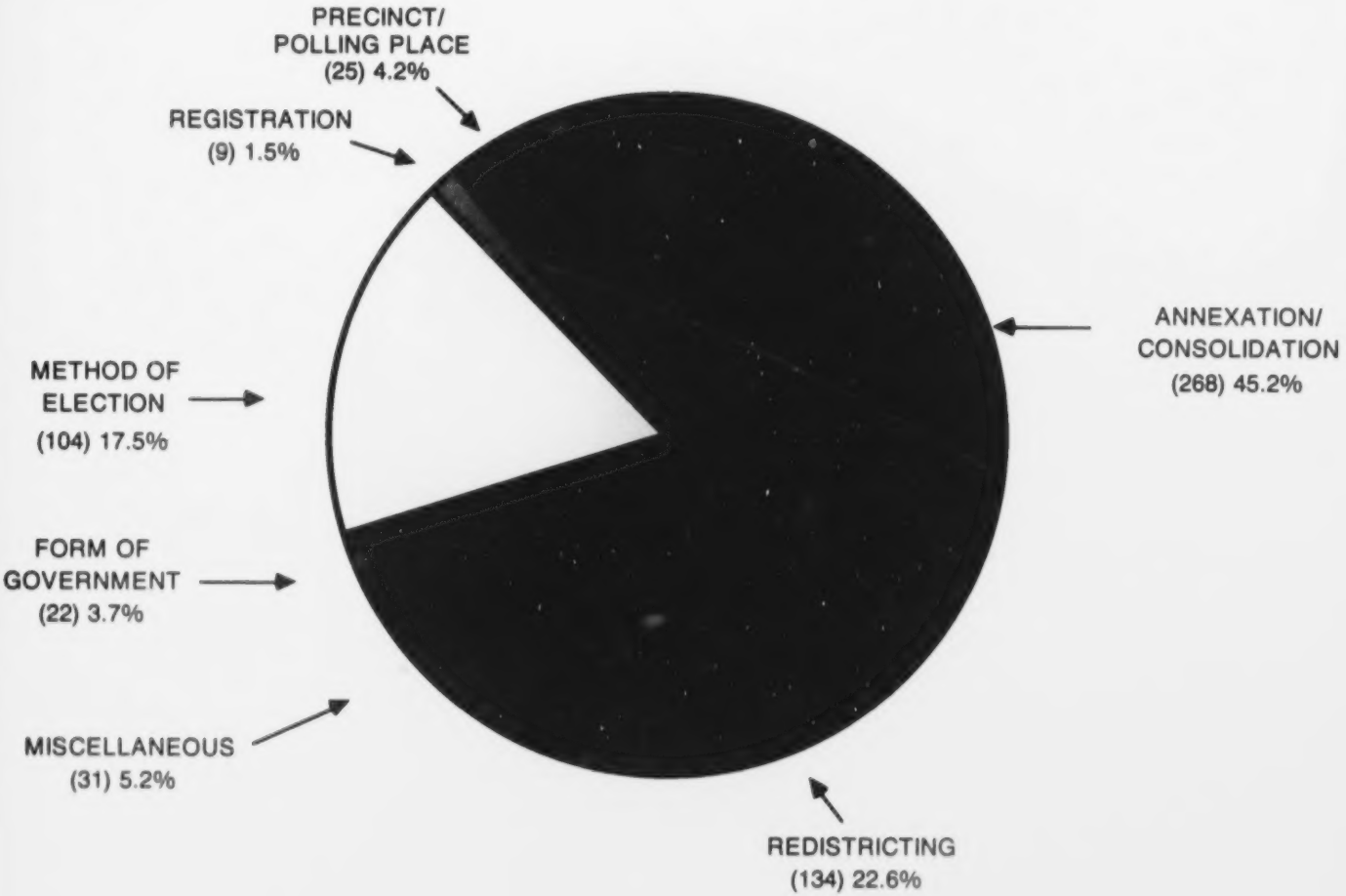
CIVIL RIGHTS DIVISION

CHANGES SUBMITTED (82,298) UNDER PROVISIONS OF THE VOTING RIGHTS ACT BY STATE, JANUARY 1, 1981 THROUGH SEPTEMBER 30, 1986

(VII-C)

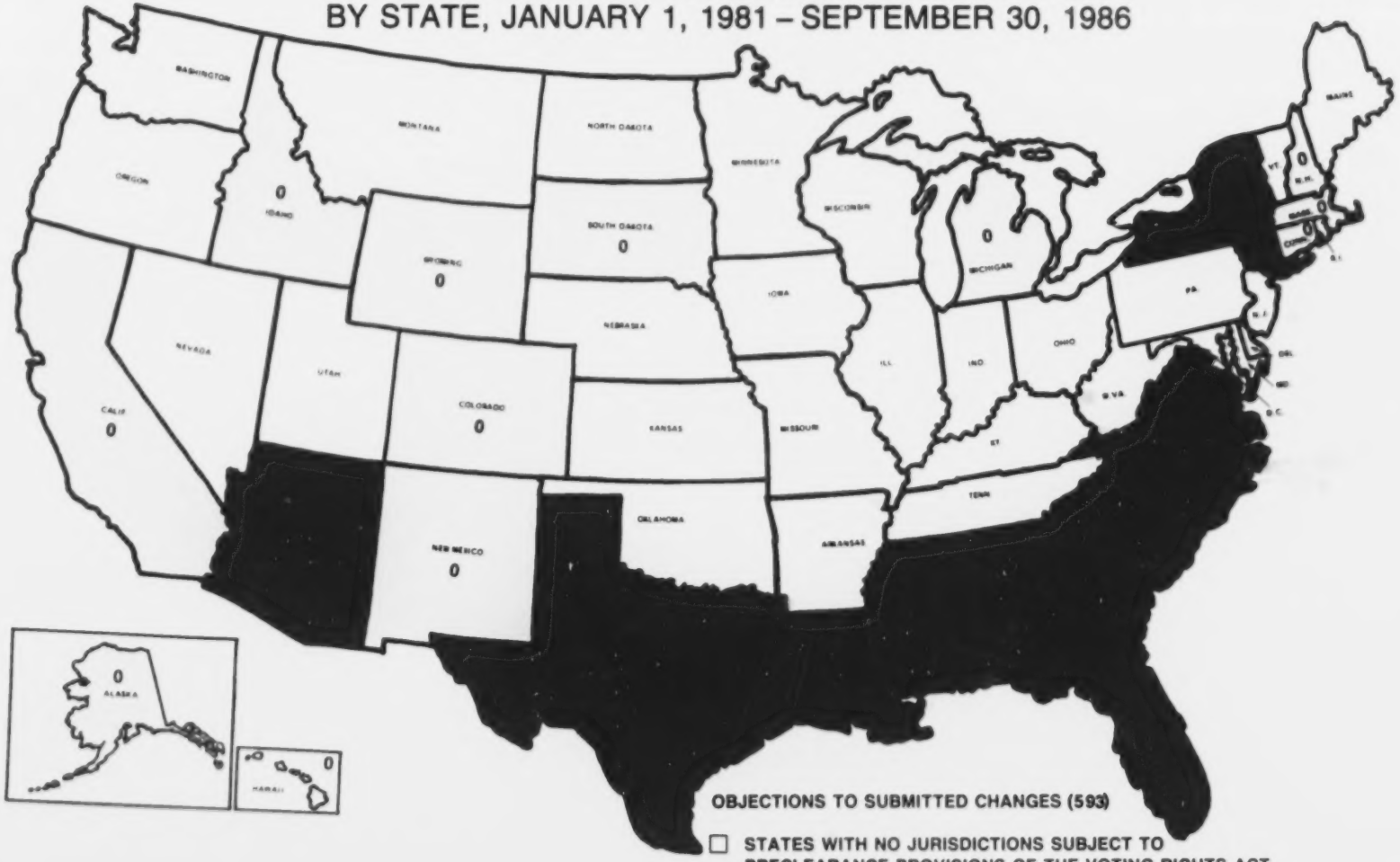
CIVIL RIGHTS DIVISION

NUMBER OF VOTING CHANGES SUBMITTED UNDER SECTION 5 OF THE VOTING RIGHTS ACT TO WHICH OBJECTIONS HAVE BEEN INTERPOSED BY TYPE, JANUARY 1, 1981 THROUGH SEPTEMBER 30, 1986



CIVIL RIGHTS DIVISION

NUMBER OF VOTING CHANGES TO WHICH OBJECTIONS HAVE BEEN INTERPOSED BY STATE, JANUARY 1, 1981 – SEPTEMBER 30, 1986



OBJECTIONS TO SUBMITTED CHANGES (593)

- ☐ STATES WITH NO JURISDICTIONS SUBJECT TO PRECLEARANCE PROVISIONS OF THE VOTING RIGHTS ACT
- ☐ NO OBJECTIONS
- ■ 1 – 50 OBJECTIONS
- ■ 51 – 100 OBJECTIONS
- ■ GREATER THAN 100 OBJECTIONS

(VII – E)

Civil Rights Appeals

Appellate advocacy in the United States Supreme Court and the United States Courts of Appeals is among the most important tasks facing the Civil Rights Division. The Division has primary responsibility for handling civil rights cases in the Supreme Court and the courts of appeals. Most of the Division's appeals are from district court judgments in cases originally handled by Division trial sections. An increasing number of cases, however, involve our participation as *amicus curiae* in cases which have the potential for affecting Division enforcement responsibilities.

Overall, since January 20, 1981, the Division has filed 182 briefs and substantive papers in the Supreme Court, and 290 in the courts of appeals. To the extent such data provide a measure of appellate activity, they reflect recent increases. In FY 1985, we filed 68 such briefs or substantive papers: 17 in the Supreme Court and 51 in the courts of appeals. The comparable figure for FY 1986 is 79: 35 in the Supreme Court and 44 in the courts of appeals. In roughly the first quarter of FY 1987, we filed 26 briefs or substantive papers, five in the Supreme Court and 21 in the courts of appeals. We have been fully or partially successful in 80% of all Supreme Court cases (see Appendix VIII-A, Supreme Court Merits Decisions, January 20, 1981 through September 30, 1986) and in 81% of all courts of appeals cases (see Appendix VIII-B, Courts of Appeals Merits Decisions, January 20, 1981 through September 30, 1986).

Appeals in Which the United States is a Party

The bulk of the Civil Rights Division's appellate activities necessarily involves the defense of judgments obtained by its trial sections and, where appropriate and authorized, the appeal of adverse judgments entered in cases the trial sections have litigated. A noteworthy case, typical of the Division's appellate activity in the Supreme Court, is *Bazemore* v. *Friday,* 54 U.S.L.W. 4972 (U.S. July 1, 1986). Among other things, this case involved the State's appeal of the Division's successful challenge to the North Carolina Extension Service's continuation of a racially discriminatory pay policy after the effective date of Title VII. The extension service, relying on the fact that Title VII is not a retroactive statute, argued that there was no new violation after enactment of the Act. The Division argued in both the Court of Appeals for the Fourth Circuit and the Supreme Court that there is a post-Act violation every time the extension service issues racially discriminatory pay. The Supreme Court agreed with our contention.

Similarly, in *City of Pleasant Grove* v. *United States,* 55 U.S.L.W. 4133 (U.S. Jan. 21, 1987), the Division argued as appellee that the all-white Alabama city of Pleasant Grove had failed to demonstrate that it was free of a racial purpose under Section 5 of the Voting Rights Act of 1965 in its effort to annex two adjacent tracts of land — one vacant and slated for white development, the other populated solely by about 20 whites. The evidence showed that the city had pursued a policy of annexing only white areas while refusing to annex similarly situated black areas. The Supreme Court affirmed the refusal of the three-judge district court to grant the city a declaratory judgment under Section 5 permitting the annexation. In the process, the Supreme Court reaffirmed that Section 5 prohibits changes in voting practices, including land annexations, that have a racial purpose, even if such changes do not have a retrogressive effect on voting rights.

The number of appellate cases handled in which the United States is a party depends in part on a number of factors. For example, with respect to the courts of appeals, such a figure would depend on how many cases are fully litigated (as opposed to settled) in the trial court, whether a party that loses to the United States in the trial court decides to appeal and — in cases where the United States is unsuccessful in the trial court — whether an appeal is appropriate and approved. Furthermore, in appellate litigation, it is hazardous to rely unduly on statistical evaluations of litigative success. While a court of appeals may adopt a result urged by the litigant, it frequently will do so without embracing all of its arguments. Conversely, a court may fully embrace one's legal analysis on most issues while arriving at a contrary result. And, of course, some cases are more difficult than others.

Nevertheless, a statistical look at the Division's rate of success can be useful. The Division makes the following effort at quantification. Cases are divided into two groups: (1) those in which the court unambiguously adopts our reasoning and suggested result or those in which the court largely adopts our analysis; and (2) those in which the court largely or completely rejects our analysis. Percentages of cases in the former category can provide some measure of effectiveness. The Division litigates many difficult cases, and takes a candid and aggressive approach to that litigation. Nevertheless, it maintains an excellent record based on these simple criteria of wins and losses.

Between October 1, 1986 and January 31, 1987 (FY 1987), the Division achieved a favorable or partially favorable decision in seven of the nine cases in which courts have reached the merits (78%). In FY 1986, such success was attained in 35 of 46 merits decisions (76%) and, in FY 1985, in 32 of 38 merits decisions (84%). The overall success rate for the Division since January 20, 1981 has been 81%.

Amicus Curiae Participation

Because the bulk of the Division's enforcement work is accomplished through litigation, it is imperative that the Division closely monitor and, where necessary, participate in court cases to which the United States is not a party that interpret the constitutional provisions and civil rights statutes the Division is charged with enforcing. Decisions affecting key issues in these areas can have a lasting effect on Division enforcement responsibilities. In many of these cases, especially those concerned with developing or problematic areas of civil rights law, the Division uses the federal government's authority to participate in federal cases as *amicus curiae* to register the government's position on the issues in question. *Amicus curiae* participation is therefore regarded as an important part of the Division's enforcement responsibility.

An example of the Division's successful *amicus* participation can be found in *Wygant* v. *Jackson Board of Educ.*, 54 U.S.L.W. 4479 (U.S. May 19, 1986). In that case, a school district enacted a racial quota in layoffs, which subjected experienced teachers to losing their jobs solely because of the color of their skin. The Sixth Circuit had approved the discriminatory plan on the ground that the quota was a proper response to societal discrimination and the need for "role models" of particular races. The Supreme Court granted certiorari.

As problematic as the Jackson school board's plan was for its victims, the case had significance far beyond its specific circumstances. The Division judged that, if racial discrimination can be justified by concepts as vague as those offered in excuse for the layoff quota, the Fourteenth Amendment's promise of equal protection would be severely undermined. The Division conducted a detailed review of the history of the Equal Protection Clause, concluded that the plan was unconstitutional, and filed a brief as *amicus curiae* to that effect. Largely agreeing with the Division's analysis, the Supreme Court applied the most strict judicial scrutiny and ruled the school board's plan impermissible. It further ruled that concepts such as societal discrimination are too amorphous to justify additional discrimination and that race-based layoff preferences are in any event unduly intrusive on the rights of innocent third parties.

In other *amicus* cases, we have successfully argued in the Supreme Court that an employer must reasonably accommodate an employee's religious practice absent undue cost, even where a failure to accommodate does not force an employee to choose between his practice and his job, *Ansonia Board of Education* v. *Philbrook*, 55 U.S.L.W. 4019 (U.S. Nov. 17, 1986); that the rational basis test applies to public sector classifications involving the handicapped, *City of Cleburne* v. *Cleburne Living Center*, 53 U.S.L.W. 5022 (U.S. July 1, 1985); that the Eleventh Amendment precludes suits against the States for monetary damages under Section 504 of the Rehabilitation Act, *Atascadero State Hospital* v. *Scanlon*, 473 U.S. 234 (1985); that the Equal Protection Clause prohibits revoking parental child custody because the parent marries a person of a different race, *Palmore* v. *Sidoti*, 466 U.S. 429 (1984); that state courts in Mississippi must comply with Section 5 of the Voting Rights Act, *Hathorn* v. *Lovorn*, 457 U.S. 255 (1982); that employment discrimination by federal aid recipients based on handicap is prohibited under Section 504 of the Rehabilitation Act of 1973 even where the primary purpose of the federal aid is not to provide employment, *Consolidated Rail Corp.* v. *Darrone*, 465 U.S. 624 (1984); that innocent employees may not be denied the benefits of their seniority in order to preserve gains in minority hiring and promotions, *Firefighters Local Union No. 1784* v. *Stotts*, 467 U.S. 561 (1984); that a female associate of a law firm had stated an employment discrimination claim by alleging that consideration for partnership was a term or condition of employment, and that she had been denied partnership on the basis of her sex, *Hishon* v. *King & Spalding*, 467 U.S. 69 (1984); that a claim of sexual harassment could be maintained against an employer under Title VII of the Civil Rights Act of 1964 based on known or clearly discernible conduct of its supervisory employees, *Meritor Savings Bank* v. *Vinson*, 54 U.S.L.W. 4703 (U.S. June 19, 1986); and that Title IX of the Education Amendments of 1972 prohibits sex discrimination in employment in federally assisted educational programs, *North Haven Board of Education* v. *Bell*, 456 U.S. 512 (1982).

The Division is constantly seeking to improve its monitoring of the burgeoning civil rights caseload in the federal courts. Its goal is to gain a comprehensive perspective on this litigation, allowing lawyers both to identify the best cases for *amicus curiae* participation and, once identified, to take timely and thoughtful action.

In that regard, in May 1986, the Division implemented a new computerized *amicus* targeting project. Since its inception, the Division's targeting project has been able to review 291 district court decisions. Noteworthy rulings were identified within weeks, and sometimes days, of their official entry into court records and in ample time for Division action. The Division's *amicus curiae* program is already expanding. By the end of the 1986 calendar year, 22 cases were under active consideration for *amicus*

curiae participation. As more and more cases identified by our computer searches reach the status where *amicus* participation may be appropriate, further increases should result.

Legal Counsel and Legislative Activities

The Division is also called upon to provide legal advice within the Justice Department and elsewhere in the government on a spectrum of civil rights and related matters. Within the Civil Rights Division, for example, trial sections may seek appellate views on legal theories to be advanced during the trial of problematic or ground-breaking cases. Elsewhere in the Department, the Division is regularly asked to comment on such diverse issues as employment discrimination, Indian religious issues and prison conditions arising in litigation and programs under control of the Civil, Criminal, Antitrust and other divisions. Such counsel is also provided upon request to other federal agencies with legal questions on civil rights. In FY 1986, for example, we provided 34 written comments for use within the Civil Rights Division, other divisions and other agencies.

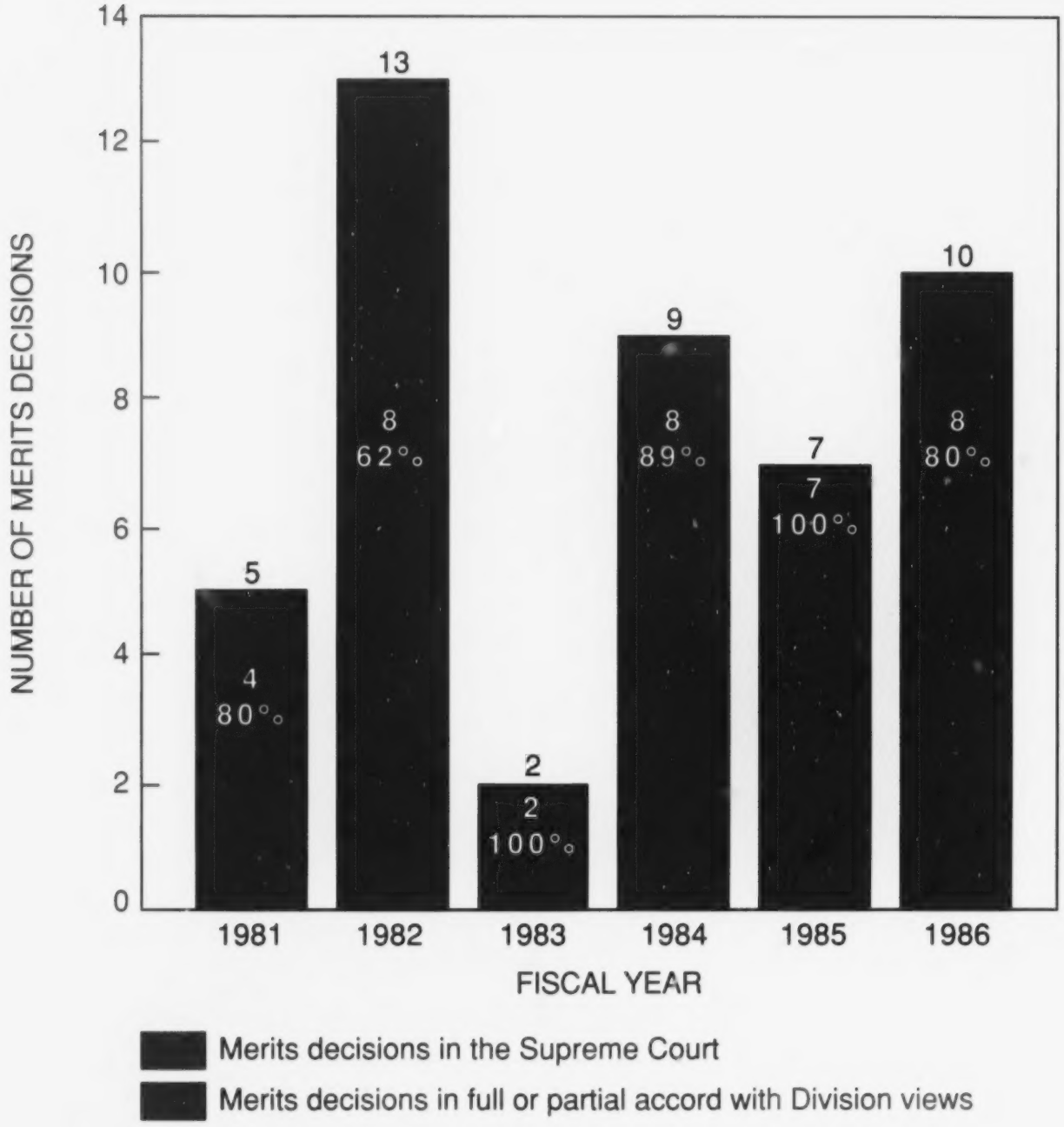
Furthermore, the Division also handles legislative matters involving civil rights. Chief among these duties is to provide comments on the civil rights aspects of proposed legislation referred to the Justice Department by Congress. The Division also reviews comments solicited from elsewhere in the Department and from other executive-branch agencies and departments. In addition, it reviews the legislative proposals of other agencies and departments on civil rights matters, drafts its own legislative initiatives, and either prepares or comments on presidential signing statements for enactments relevant to civil rights activities. As an example of the Division's legislative initiatives, the Division drafted amendments to strengthen the Fair Housing Act that were introduced in both the 98th and 99th Congresses.

Conclusion

Since 1981, the Division has maintained an active litigative program in both the Supreme Court and the courts of appeals. The program continues: 19 new cases have been assigned in FY 1987 (as of January 31, 1987), and we expect that additional assignments will be made on a regular basis. We further expect that, due to the expanded *amicus curiae* program discussed above, our activities in these areas will increase. It is anticipated that the remarkable success record maintained by the Division in appellate matters since 1981 will continue.

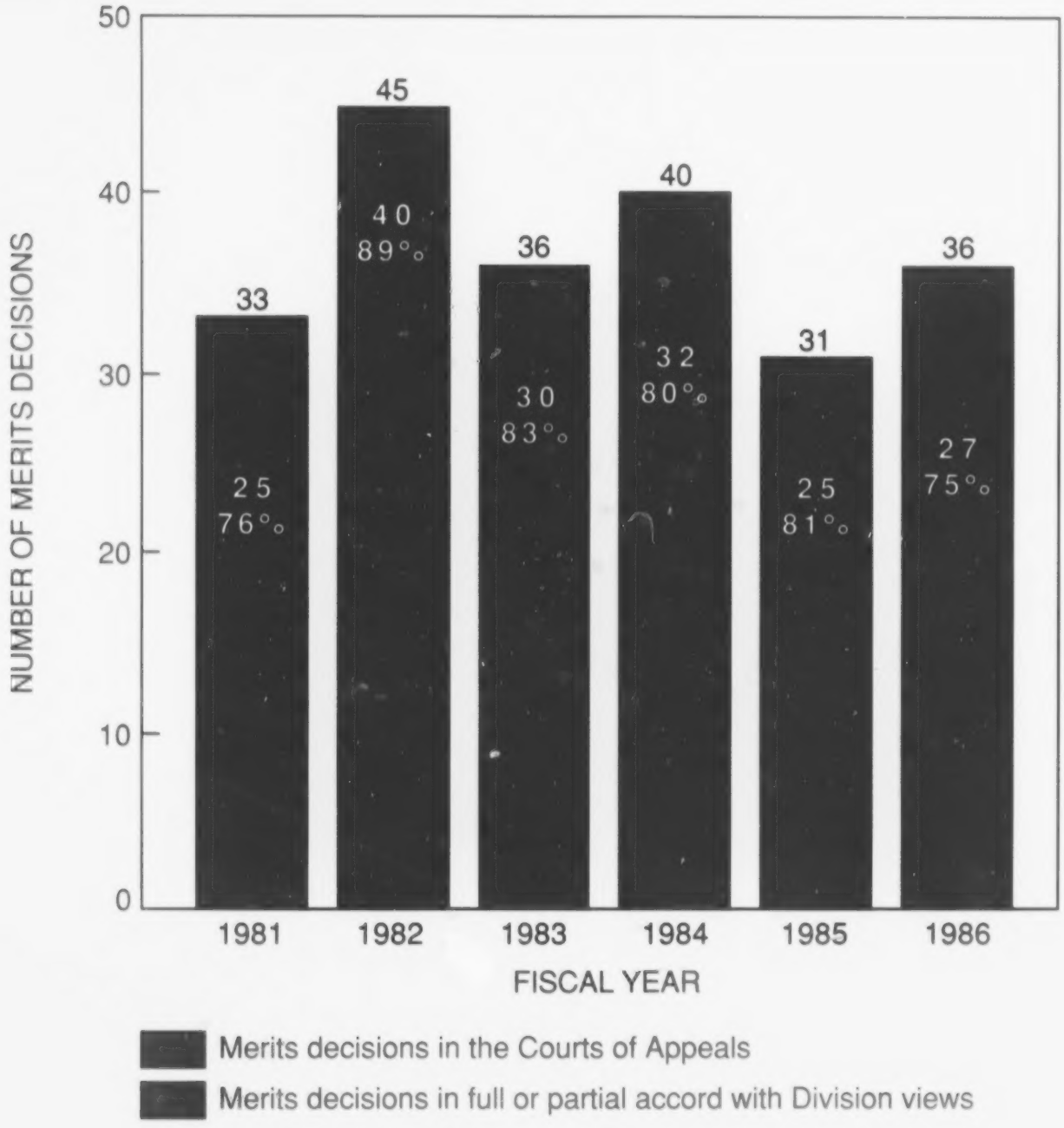
CIVIL RIGHTS DIVISION

SUPREME COURT MERITS DECISIONS
JANUARY 20, 1981 THROUGH SEPTEMBER 30, 1986



CIVIL RIGHTS DIVISION

COURTS OF APPEALS MERITS DECISIONS
JANUARY 20, 1981 THROUGH SEPTEMBER 30, 1986



Coordination of Civil Rights Enforcement Activity

Issued in late 1980, Executive Order 12250 directs the Attorney General to coordinate enforcement of over fifty federal laws that prohibit discrimination on the basis of race, color, national origin, sex, religion, and handicap in programs funded by the federal government (see Appendix IX-A, 56 Statutes Prohibiting Discrimination). These statutes embody a fundamental principle: the activities that the federal government funds from tax monies levied on all the people must be open to all the people without discrimination. The array of specific oversight and management responsibilities in Executive Order 12250 can be reduced to one essential duty: the Department of Justice must ensure that the federal agencies consistently and effectively enforce the civil rights statutes.

To this end, each of the 27 federal agencies that provides federal financial assistance has established a civil rights enforcement program to ensure that its funds are not used to support discrimination. In FY 1985, these agencies collectively devoted close to 2,000 workyears to investigating complaints, conducting compliance reviews, and collecting and reviewing data to ensure the nondiscriminatory operation of their recipients' programs and activities. Thus, the enormous scope of federal financial assistance coupled with the large number of agencies involved made civil rights enforcement, at a minimum, complex (see Appendix IX-B, Types of Recipients of Federal Financial Assistance by Agency).

The enforcement of civil rights statutes was further complicated by their piecemeal enactment, their disparate purposes and applications, and by the decentralized, agency-by-agency mode of enforcement. Instances of inconsistent application of these civil rights laws among different federal agencies were reported. Ineffective procedures hampered enforcement efforts at some agencies, while others had unduly burdensome reporting requirements. Gaps in coverage coexisted with overlaps in coverage—some federally aided programs were investigated by several federal agencies, while the practices of other such programs went unexamined. Further, the more than 90 federal executive agencies, themselves subject since 1978 to the statutory requirement that they must not discriminate on the basis of handicap in the operation of their own programs and activities, had made little progress towards compliance.

The Division has responded to these problems with regulatory and administrative initiatives on four fronts:

- Monitoring the efforts of agencies to enforce civil rights in their federally assisted programs;
- Reviewing all new civil rights regulations covered by the Executive Order;
- Providing legal and policy guidance on general issues to all agencies, and giving technical assistance and training in response to requests from individual federal agencies; and
- Establishing programs to ensure that the federal executive branch does not discriminate on the basis of handicap in its own programs and activities.

Monitoring Agencies' Enforcement of Civil Rights Statutes

The Division has initiated a yearly planning process to organize and streamline civil rights enforcement. We require each federal agency with civil rights enforcement responsibilities under the Executive Order to develop an "implementation plan" that identifies the activities the agency intends to accomplish in a one-year period in the context of long-range goals. In FY 1986, the Division assisted 26 agencies in developing appropriate objectives and in planning practical, attainable activities to achieve them, ensuring more effective use of civil rights resources. Through its formal review of these plans, the Division has helped to coordinate the disparate activities of these agencies, making possible a government-wide approach to civil rights issues that goes well beyond the scope of any one agency acting alone.

When an agency's plan specifies that the agency intends to revise an investigative manual or provide interpretive guidance to staff on a civil rights policy, the Division provides advice to ensure that the work product is consistent with similar policies and practices at other agencies and that it accurately follows civil rights law.

Federal agencies spend considerable enforcement resources on the investigation of complaints. In FY 1983, the federal government received 4,937 complaints of discrimination in federally assisted programs; in FY 1984, 4,018; and in FY 1985, 5,155. The Division often provides advice to agencies on how a specific complaint should be handled. For example, in referring to the Federal Aviation Administration (FAA) a complaint on the

treatment of blind passengers by airline personnel, the Civil Rights Division advised the FAA that it had an obligation to review airline policies and procedures filed with the FAA and to refuse to accept any that it found discriminated against qualified handicapped persons on the basis of handicap.

Often federal agencies seek advice from the Division on how to investigate complaints or on how to resolve complex or precedent-setting issues. Literally hundreds of such requests are answered by the Division's staff each year. While the simpler requests are resolved quickly over the telephone, some require painstaking research and break new civil rights ground. For example, the Office of Revenue Sharing (ORS) in the Department of Treasury asked whether persons with 20/40 or 20/70 vision that can be corrected to 20/20 with glasses are handicapped individuals within the meaning of Section 504 of the Rehabilitation Act. The Department determined that, even assuming that modest deviations from 20/20 vision constitute a physical impairment, they do not "substantially" limit either the major life activity of "seeing" or of "working" and, thus, do not come within the protections of the statute. The answer resolved several dozen cases involving fire fighters and police officers that were being processed at ORS.

Reviewing New Civil Rights Regulations

If the federal civil rights effort is to be successful, agency regulations must be clear, appropriate, and consistent. The Division must, therefore, not only ensure that the 39 statutes that prohibit discrimination on the basis of race are consistent with one another, but also that these regulations are consistent with the regulations issued under the 50 statutes prohibiting discrimination on the basis of sex, the 33 statutes prohibiting discrimination on the basis of religion, and the 20 statutes prohibiting discrimination on the basis of handicap (see Appendix IX-A, 56 Statutes Prohibiting Discrimination).

The Division requires each federal agency to submit civil rights regulations to the Assistant Attorney General for review. During FY 1986, this review was undertaken in connection with 34 separate regulations for federally assisted programs. Most often, the Division suggested changes that conformed these new regulations to the most recent judicial pronouncements, particularly those of the Supreme Court. Thus, for example, the Division provided comments to the Department of Education on its proposal to amend its regulation implementing Title IX of the Education Amendments of 1972, as amended, concerning fringe benefit plans so that the regulation would be consistent with Supreme Court decisions in *City of Los Angeles Department of Water and Power* v. *Manhart*, 435 U.S. 702 (1978), and *Arizona Governing Committee for Tax Deferred Annuity* v. *Norris*, 463 U.S. 1073 (1983). The Division advised the Department of Education that, although equal contributions by male and female employees to fringe benefit plans are required, neither *Manhart* nor *Norris* requires equal contributions by employers.

Providing Legal and Policy Guidance

The Division takes steps to ensure that federal agency personnel, whose job it is to enforce the civil rights statutes, are apprised of new pertinent information. During FY 1986, Division staff recorded over 600 instances of providing technical assistance to federal agency personnel, most often through meetings and telephone calls.

During this time, Division staff also developed and conducted training seminars. Although developing a training module and tailoring it to the needs of a specific federal agency is a time-consuming task, past experience has shown it to be extraordinarily useful in ensuring that civil rights personnel interpret the civil rights statutes correctly. For example, the Division conducted seminars on hearing impairments, one for the civil rights staff of the General Services Administration and one for program managers at the Drug Enforcement Administration. These seminars focused on hearing impairments as disabling conditions, the problems that deaf individuals face in a hearing world, the civil rights implications of these problems, and potential solutions to these problems. The seminars highlighted the obligations under federal law to communicate effectively with beneficiaries of federally assisted programs by using appropriate auxiliary aids, including the use of sign language interpreters, assistive listening devices, and devices that make telephone communication possible for deaf persons.

In 1986, the Division also distributed more than 1,500 copies of six memoranda on issues of general applicability to federal agency staff and the general public. One provided guidance on how to conduct a public meeting so that hearing-impaired, visually-impaired, and mobility-impaired persons would have access to the meeting. Another provided information on assistive listening devices, state-of-the-art equipment that can be used to improve communication with hearing-impaired persons. Because these memoranda provide information on how to make programs accessible to disabled persons in a cost-effective manner, they should prove instrumental in fostering compliance with all federal laws that prohibit discrimination on the basis of handicap.

Besides the cases in which the Division represents the United States, the Division frequently participates in cases to ensure consistency and uniformity in the government's legal positions on civil rights statutes. Division participation is a vital link between the federal government's pro-

grammatic enforcement efforts and its litigation strategy. Division efforts ensure that what the United States Attorney in Philadelphia does in a case to make a federal building accessible is consistent with the efforts of the Navajo and Hopi Relocation Commission to find accessible housing for Native Americans in Arizona. The Division thus ensures that federal civil rights efforts are consistently implemented, whether they are initiated administratively or through litigation.

Establishing Section 504 Programs

In 1978, Congress extended the protections of Section 504 of the Rehabilitation Act of 1973 to all programs and activities conducted by federal executive agencies. Until that time Section 504 had been the province of 27 agencies that provided federal financial assistance; with the 1978 amendment, over 90 federal agencies were faced with responsibilities to ensure that their own programs were open to disabled people. No action was taken in response to the legislative directive until 1981 when this Administration took office. Under current leadership, the Division, taking account of the significant agency differences in size, mission, nature and complexity, crafted advice to meet the unique needs of over 90 agencies, not only for the drafting of regulations but also for the actual implementation of the nondiscrimination obligation.

Applying disability rights principles to federal programs as large and diverse as the national parks system, the social security system, the federal prisons, and the operations of the nation's tax collection process has been a time-consuming, massive undertaking. To date, 46 federal agencies have issued final regulations implementing prohibitions against discrimination on the basis of handicap in their own programs. Another 10 have already published proposed rules for public comment, and another 33 have drafted rules that are being readied for publication (see Appendix IX-C, Status of Section 504 Regulations Governing Federally Conducted Programs as of January 31, 1987).

To expedite the lengthy rule-publication process, the Division pioneered a new procedure that enables groups of federal agencies to publish their rules together at one time. This new procedure eliminated most of the paperwork and administrative burdens for agencies issuing rules, thus expediting the final publication of needed regulations. In addition, joint publication saved the federal agencies over $280,000 in publication costs.

Publication of Section 504 rules is, however, only the first step in ensuring that federal programs are accessible to disabled people. The Division has written to all agencies to remind them of their obligations and to offer assistance in meeting them. This assistance is being translated into identifiable, concrete advances for disabled people. TDD's are being installed in federal agencies and their availability publicized in the deaf community. Civil rights documents are being produced in Braille, in large print, and on tone-indexed tape. Federal buildings are being surveyed and modified under tough new federal accessibility standards, so that physically disabled persons can participate freely at federal worksites. Federal agencies have instituted impartial systems under which complaints alleging discrimination on the basis of handicap in federal programs can be resolved quickly and fairly.

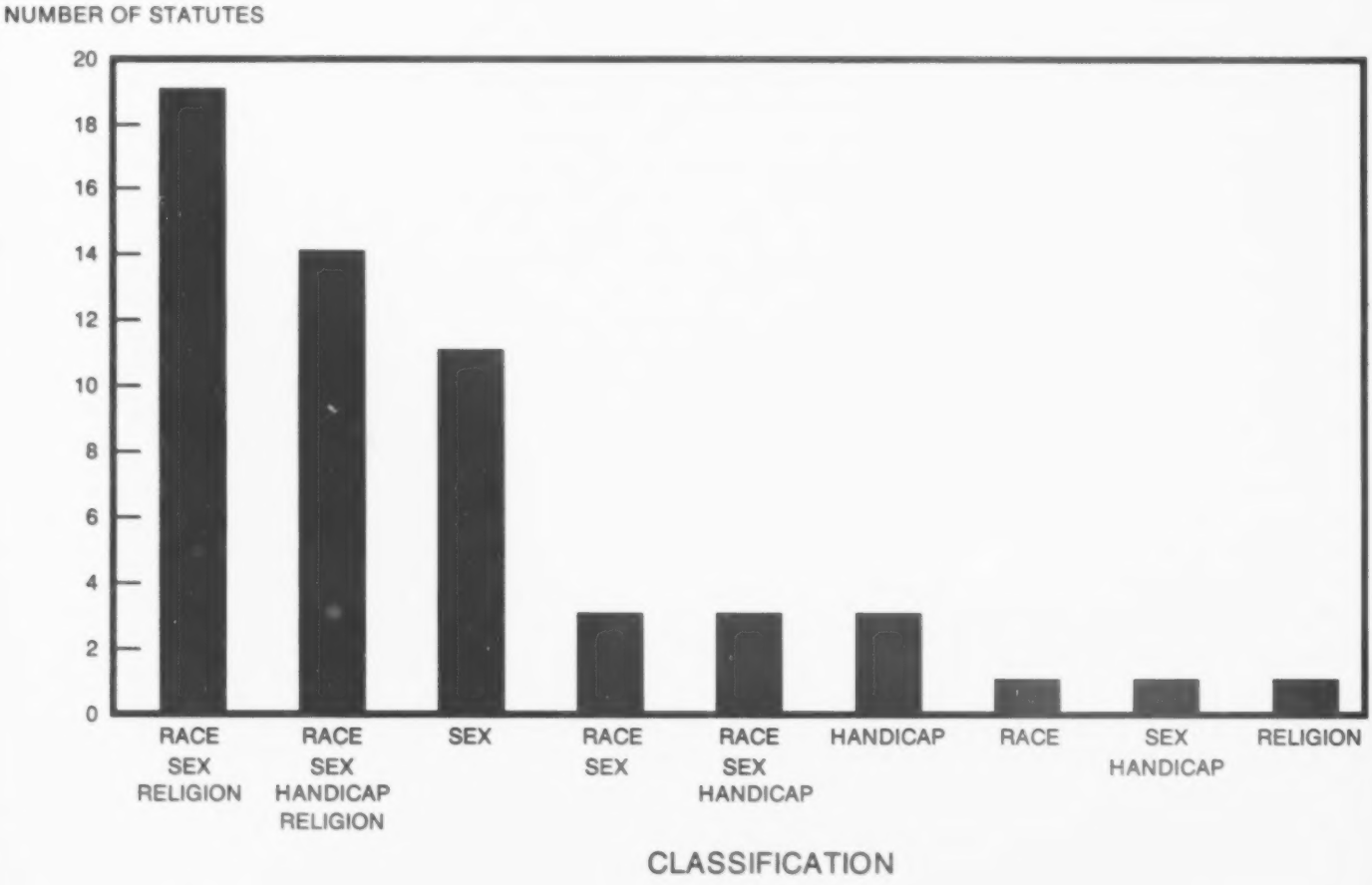
Conclusion

The Division has initiated a wide range of leadership initiatives to improve the effectiveness and efficiency of the overall federal civil rights enforcement effort. Further, it has established a comprehensive yet common-sense framework within which all agencies administering federal financial assistance programs are required to establish civil rights goals and priorities, and to tailor specific activities to achieve them. This adoption of sound planning and management principles as an essential aspect of civil rights enforcement has improved both performance and results. Through its review of agency regulations, policies, and programs, the Division has contributed substantially to the ability of the federal government to speak with a "single voice" in civil rights matters. It has provided much-needed guidance that has enabled agencies to speak with clarity and consistency to their recipients and to the public, especially in implementing and interpreting landmark judicial decisions. Finally, the Division has led the way for the more than 90 federal executive agencies to take substantial, positive efforts to comply with the statutory requirement that the federal government not discriminate against handicapped persons in the operation of its own programs and activities. The Division's regulatory and programmatic initiatives have served as a catalyst for government-wide action, helping to ensure that the promise of Section 504 becomes a reality.

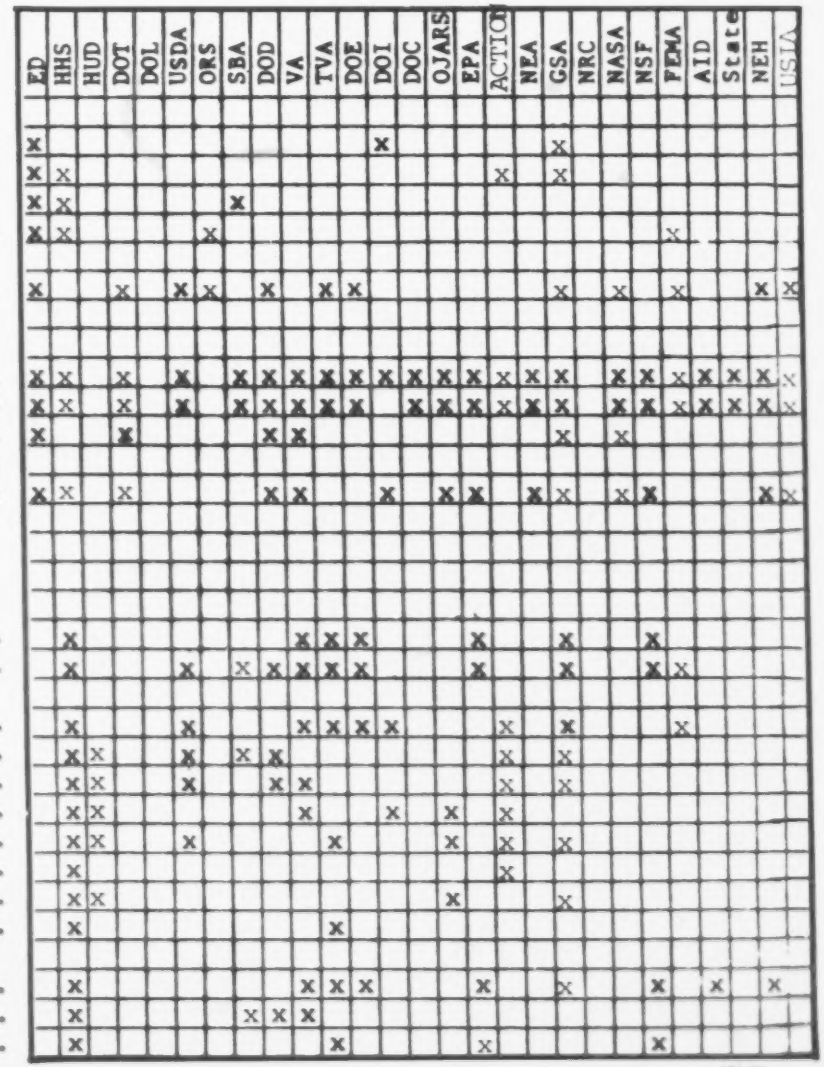
CIVIL RIGHTS DIVISION

56 STATUTES PROHIBITING DISCRIMINATION

(BY TYPE OF COVERAGE)



TYPES OF RECIPIENTS OF FEDERAL FINANCIAL ASSISTANCE BY AGENCY



Community Service

Public Community Action Orgs. (L) (e.g., legal services, cooperatives) .....
Private Nonprofit Community Service Orgs. (e.g., UGF funded) .....

Arts & Humanities (including Tax Exempt Orgs.)

Arts Org./Foundations (S&L & Private Nonprofit) .....
Media & Performing Arts. Org. (Private Profit & Nonprofit) (e.g., TV, Radio, theatre companies, etc.) .....
Museums (S&L & Private Nonprofit) .....
Individuals .....
Tax Exempt Orgs. (e.g., churches, cemeteries) .....

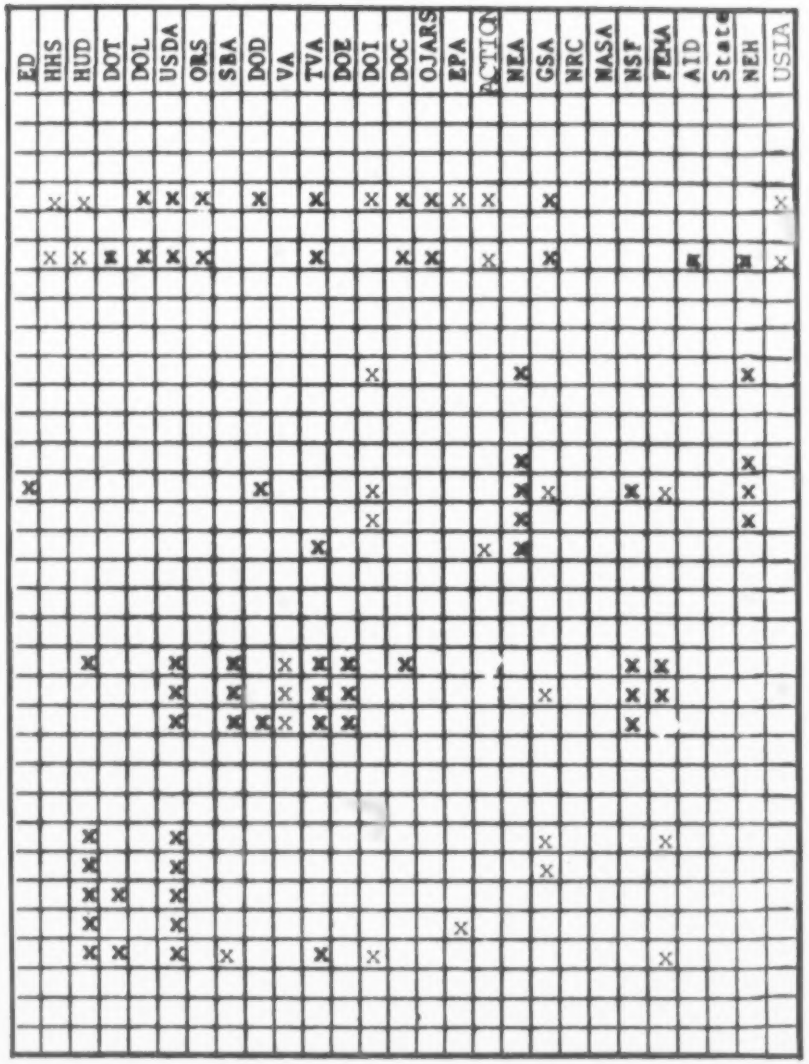
Commerce & Industry

Corporations (Public & Private, Profit & Nonprofit) ...
Small Business .....
Individuals .....

Housing

Public Housing Authorities (S&L) .....
Clearinghouses/Councils of gov'ts. (S&L) .....
Housing Depts. of General Fund (S&L) .....
Indian Tribal Org. (Housing) .....
Individuals .....

AGENCY



Government Services

General Operations (S) (unidentified gov't. quasi-gov't) .....
General Operations (L) (unidentified gov't. quasi-gov't) .....
Planning & Development Depts./Agencies (S&L) .....
Public Safety/Police/Fire Depts./Agencies (S&L) .....
Criminal Justice Councils (S) .....
Criminal Justice System/Orgs. (L) .....
National Guard/Civil Defense (S&L) .....

Land/Natural Resources

Parks/Recreation/Wildlife Depts. (S&L) .....
Libraries (L) .....
Water/Sewer Depts. (S&L) .....
Environmental/Energy Depts. (S&L) .....

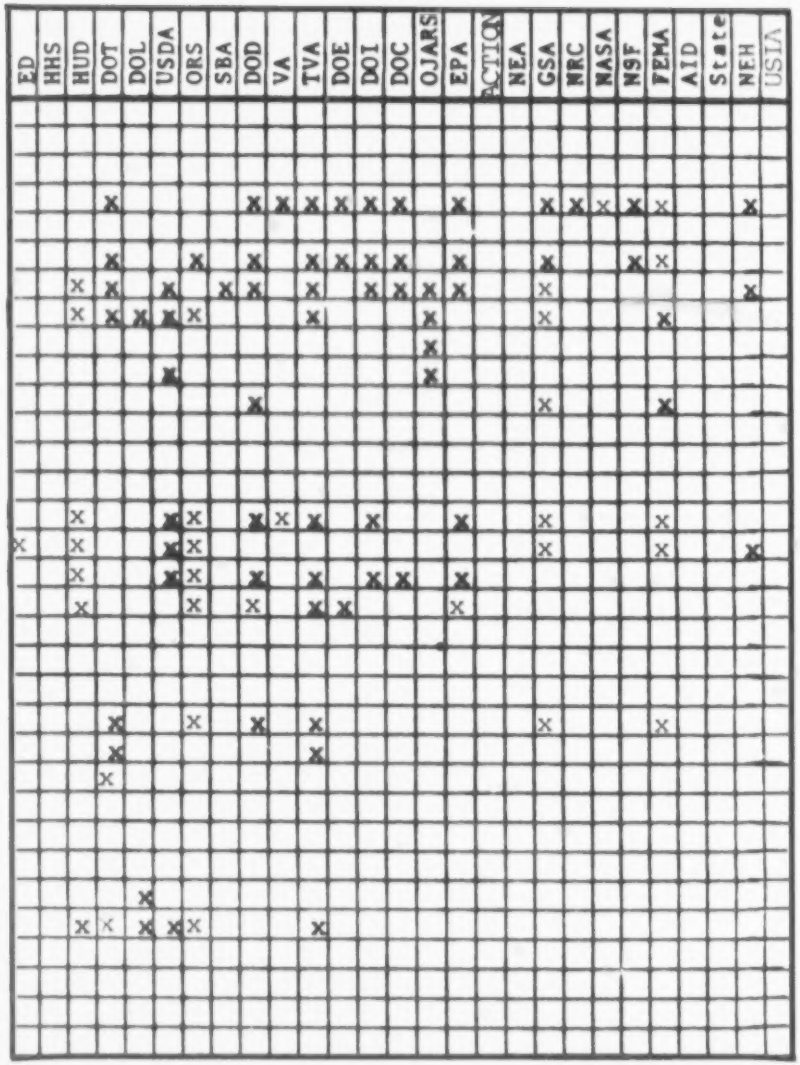
Transportation

Transportation Depts. (S&L) .....
Public Transit Authorities (S) .....
Airlines/Airports (S&L) .....

Labor

Employment Security Depts./Agencies (S) .....
Labor Depts./Orgs. (S&L) .....

AGENCY



CIVIL RIGHTS DIVISION

STATUS OF SECTION 504 REGULATIONS GOVERNING FEDERALLY CONDUCTED PROGRAMS AS OF JANUARY 31, 1987